



# OLD BAILEY EXPERIENCE.

CRIMINAL JURISPRUDENCE.

AND THE

ACTUAL WORKING OF OUR PENAL CODE OF LAWS.

ALSO,

AN ESSAY ON PRISON DISCIPLINE,

TO WHICH IS ADDED

A HISTORY OF THE CRIMES

COMMITTED BY OFFENDERS IN THE PRESENT DAY.

BY THE AUTHOR OF

“THE SCHOOLMASTER’S EXPERIENCE IN NEWGATE.”

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## P R E F A C E.

CONCERNING the nature of our criminal laws as an abstract question, so much has already been said and written by forensic and learned persons, that as a theoretical subject, nothing remains to be urged, either in support of their alleged excellence on the one hand, or of the general call for their revision and amendment on the other. Facts, however, have been, to a great degree, if not altogether, disregarded by legislative speculators. Nevertheless, *facts* are the only things that can overcome the prejudices of all parties. Impressed with this truth, the writer of the present work has, notwithstanding his repugnance to the task, been induced to lay the results of his experience and observations open to the world. They relate to the *practical effects of our criminal laws*. Every science is best studied on the inductive system: theory and narrow technicalities never wholly stand the test of actual experiment. In criminal law, however, the ground of experience is yet untrodden; and it was well said by a distinguished writer, “that law is studied in England rather as an art than a science.” This country, which abounds with men skilled in scientific



acquirements, is yet deficient of any just and true knowledge of the science of legislation. Every session of parliament, indeed, some portion of our criminal code comes under consideration of the house, and alterations are either proposed or made; still no real progress towards a positive amendment is discoverable by any acute observer. This is a reproach to our rulers, and from which it is hoped they now see it is time to redeem themselves. Laws made by the inhabitants of another sphere for those resident in this, and *vice versâ*, would be as likely to suit the state of society in each, as those made by men residing in the same planet, if framed on speculative opinions, disregarding the actual experience of the times in which they live. The obtuseness, however, of legislators in comprehending the proper method of treating their fellow-men is proverbial in the mouths of all persons who have mixed in that society which is calculated to impart to them a real knowledge of their own species. If, then, rulers will not step from their pedestals to acquire the qualifying information for making laws, not only beneficial to themselves, but, which is of more importance, to *mankind at large*, it then becomes the duty of all men to aid in convincing them of their error. The author would not gratuitously draw upon himself a charge of egotism, or be thought to put himself forward as one qualified to instruct legislators in their duty, further than to furnish them with facts, the knowledge of which has been acquired by close observation. If laws for the human race were made by gods or even demi-gods, then would those who enacted them be justified in neglecting the opinions and experience of mere mortals. It cannot, however, be treason to presume that the greatest master-minds in

either House of Parliament are liable to error ; it is therefore submitted whether they are not bound to receive, to the widest extent, all the evidence which is offered them, especially when the truth of the matter proffered can be proved beyond any controversy. Under the impression that they will, or ought to do so, have the following pages been written.

Some of the matter which this volume contains appeared in print in the latter part of the year 1832, in "Fraser's Magazine." Originally the manuscript of only three papers were handed to the editor, nor had the author any thought of pursuing the subject further. But the favourable notice the papers received from the public induced him to extend his remarks, and subsequently several other articles on the same subject, were written for, and inserted in, that periodical. In the beginning of the present year, it was suggested to the author that a publication of the whole series was called for ; this hint, together with the appearance of "Archbishop Whately's Thoughts on Secondary Punishment," which are considered by the writer of this work opposed to all experience on the practical results of the effects of punishment, led to a re-consideration of the entire subject in detail. Had a work of this size been contemplated in the first instance, it might have appeared modelled under more regular and specific heads ; to compensate for any defect of this nature, a general and copious index is annexed to the work.



# CONTENTS.

## CHAPTER I.

*On the State of the Poor, and Cause of Crime.*

SECT. I.—Want of an efficient system of education for the poor, the cause of crime . . . . .	Page 1
II.—Plan for a better system of education, and the employ- ment of the poor . . . . .	17

## CHAPTER II.

<i>General Remarks on the Prisoners confined in Newgate before and after Trial, and the Effects of Punishment in deterring Men from Crime . . . . .</i>	37
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## CHAPTER III.

*Courts at the Old Bailey, and the necessity of an Appeal Court.*

SECT. I.—Hurried trials and treatment of prisoners in Newgate	59
II.—Necessity of an Appeal Court . . . . .	90
III.—Information respecting the character of prisoners .	112

## CHAPTER IV.

*Principals. Secretary of State's Office, or difficulty of Establishing  
Cases of Innocence before those in whose hands the Power of  
Pardon is vested.*

SECT. I.—The Pardon Power . . . . .	117
II.—The Privy Council* . . . . .	135

## CONTENTS.

### CHAPTER V.

#### *On the Sanguinary Character of our Penal Laws.*

SECT. I.—Effects of executions. Treatment of malefactors under sentence of death in the cells of Newgate, illustrating the necessity for an alteration, particularly as regards religious instruction . . . . .	158
II.—On the inutility of capital punishment, and the acerbity of the British laws . . . . .	184
III.—The punishing of one crime creating others . . . . .	206

### CHAPTER VI.

#### *Prison Discipline and Secondary Punishments.*

SECT. I.—On the character of men who generally commit crime, and the best mode of disposing of the habitual offender . . . . .	213
II.—On the impolicy of over severity in the treatment of convicts in general, and the views of Archbishop Whately considered on transportation . . . . .	229
III.—Delinquency increased unnecessarily by the number of petty enactments against crime . . . . .	255
IV.—Rancorous feeling of the poor. The punishment of embezzlement; and the necessity for the institution of courts of summary punishment . . . . .	264
V.—On the American system of solitary confinement . . . . .	272
VI.—On classification . . . . .	286
VII.—On juvenile offenders . . . . .	294
VIII.—On the effects of theatrical exhibitions on untaught boys . . . . .	307
IX.—On the presentment of bills of indictment before the grand jury . . . . .	314
X.—On allowing counsel to prisoners charged with felonies . . . . .	322

### CHAPTER VII.

Crimes. . . . .	328
SECT. I.—Housebreakers . . . . .	330
II.—Highwaymen . . . . .	339

SECT. III.—Coiners . . . . .	344
IV.—Pickpockets . . . . .	350
V.—Sneaks . . . . .	364
VI.—The shoplifter . . . . .	371
VII.—Snatchers of reticules, watches, &c. . . . .	372
VIII.—Starrers . . . . .	373
IX.—Horse and cattle stealers . . . . .	375
X.—Swindlers . . . . .	379
XI.—Men and women who waylay inebriate persons for the purpose of robbery . . . . .	384
XII.—Receivers of stolen goods . . . . .	405
XIII.—Forgers . . . . .	415
XIV.—Embezzlement . . . . .	419
XV.—Duffers and ring droppers . . . . .	421
XVI.—Stealing from carriages, carts, &c. . . . .	423
XVII.—Depredations on the River Thames . . . . .	424
TABLES OF CRIME . . . . .	427
INDEX . . . . .	441



# OLD BAILEY EXPERIENCE.

## CHAPTER I.

### ON THE STATE OF THE POOR, AND CAUSE OF CRIME.

#### SECTION I.

#### *Want of an efficient System of Education for the Poor, the cause of Crime.*

“ Therefore I said, Surely these are poor ; they are foolish : for they know not the way of the Lord, nor the judgment of their God. I will get me unto the great men, and will speak unto them ; for they have known the way of the Lord, and the judgment of their God : but these have altogether broken the yoke and burst the bonds.”—Jeremiah v. 4, 5.

It cannot be otherwise than that all men should desire to be happy, both in this and the next state of existence, and that having this desire, they should naturally wish to adopt the means of obtaining it. We may, therefore, reasonably inquire how it is that men commit crime, seeing it unerringly leads to the opposite of happiness ; namely, disgrace, loss of character, and punishment, with the certain destruction of eternal welfare, besides, during their present state of existence, being encumbered with a self-accusing and reproaching con-



science, which ever must be a state of misery in itself. Now, considering that personal interest is the *primum mobile* of all human actions, it would appear from the conduct of a large portion of society in all ages, that many are continually rising into life, ignorant of what is good for themselves, and are not sufficiently ethically instructed, to form correct judgments as to what line of conduct is the best to adopt for the attainment of happiness. If, therefore, all men who fall into the habits of crime do so purely from lack of knowledge, they must be considered objects of pity and commiseration, and not of punishment. Men in general having correct notions of right and wrong, and who are otherwise on the *qui vive* to all the offices of life, and the relations of society, do not pause to consider, or stop the current of their everyday ideas, to reflect on the condition of mind in which a considerable number of their fellow-men are placed, and the effect that condition has on society in general. Want of knowledge, in fact, is the cause of all crime and misery,—not book knowledge, or that of the schools,—but that knowledge, which should teach mankind, in all the ramification of society, what is really and truly their individual interest, as connected with the community at large: the lack of this, and the paucity of moral knowledge, have disorganized society. The legislator is as deficient on this head as the pauper, and to which may be traced all the errors of legislation since governments were instituted. There can be no happiness in a country, when all the parts of the community are not harmonized; and it is the peculiar province of the leaders in a concert to make themselves acquainted with the keys and chords, to produce harmony. The body politic may be compared to the body corporate; if the symbolism of the parts are disturbed, or interrupted, disease is the immediate result, morbid action commences. If there be a non-consent of the different parts of the body, through the intermediation of the nerves, muscular volition ceases, and all is jarring and confusion, when

the body becomes enlivened and healthy. One would be led to think, from the conduct of modern legislators, that they thought the community could best enjoy happiness whilst in a state of disunion. The fable of the body's members is reversed; the *belly* has revolted against the *members*, who are now idle and out of employ, as our legislators cannot but know that the cause of crime is want of knowledge and employment, both of which they have the means of giving, the latter especially, by the appropriation of land for manipular cultivation. In the language of Menenius Agrippa, "The legislators must confess themselves wondrous malicious, or be accused of folly." Perhaps they may say, that they are not possessed of any controlling power over the circumstances of the times; that the increase of the poor population defies all legislative remedies, and that the crime springs from poverty; but the poor do not commit crime abstractedly, because they are poor; that is to say, the instances wherein crimes have been committed, and traced to be caused by the temporary or immediate want of the culprits, are fewer than those committed by persons far above absolute want, and who had the restraining advantages of education. Yet it is admitted, that from the pauper population comes all the body of the criminals; and the reason why it should be so is plain enough; the children of the poor are, *per necessitatis*, brought up in ignorance, and are exposed to every evil and vicious example, which places them in situations of strong temptation. to join those already engaged in crime; they undergo greater privations, without possessing the moral restraints which belong to children of more fortunate parentage. But whatever may be the cause, when men are unendued with a sense of the enormity of robbing their fellow countrymen, and that it is not more to their advantage to abstain from crime than to commit it, they may be pronounced to be in a morbid state of mind, denominate the disease what you may—call it madness, or by any other name. I do not mean to affirm

system of government, there is good reason to hope for a permanent state of happy morality. The question is, how we are to arrive at this desideratum? The rulers say, the only panacea is the halter and the cat-o'-nine-tails; but if they hang a man on account of his being afflicted with a certain malady, will that execution prevent the constitution of others falling under the effect of the same complaint? Certainly not. Neither will the violent death of one rogue prevent others from continuing their course of delinquency. Men in the army and navy are not found to abandon their profession, on account of witnessing the fall, occasionally, of their comrades in the service. It is admitted, that there is a charm in hazardous callings; why then should it not be so with criminals, who make as much a trade of their pursuits as men in the army or navy, and who are generally as unintellectual as the thief, which accounts for the stolidity and hardihood of them all. There is another consideration on the supposed benefits arising to society from severe punishments. It is thought that if the hardened offender is not deterred, yet the crimes of society in general are held in check by the examples made: this is an egregious mistake; the criminal professor disregards it, he looks on it as a probable consequence, but like the soldier, has made up his mind to brave it; but the honest man who is yet to become criminal, not contemplating the commission of any offence, applies it not to himself. In every community there will always be some, through the weakness of human nature, slipping off the beaten path; many lose for a time their self-possession, and fall by infatuation for women; others are carried into crime through the road of a love for company and inebriation; not a few by love of play; weakness of mind, temperament, and circumstances, will ever throw a small portion of every community into the hands of the law; but I think no man acquainted with human nature will say, that one out of a hundred of such offenders as last named, ever, in the current of their

licentiousness, stop to consider, that its ultimate end must be crime and punishment. With such characters, the man who commits crime to-day would yesterday have knocked down any man who should have hinted at the bare possibility of his being capable of committing an offence against the laws; and this, too, may occur, under a real sense of honest indignation and repugnance at the charge, only a few hours before the party stands a criminal among his fellow men. Our laws are altogether as unfitted for this kind of offender, as they are for the more desperate one. Our legislators are too apt to judge of the sensations of others, under circumstances of distress, disgrace, and punishment, by the standard of their own feelings; but this is a mode of reasoning which will ever lead to erroneous inferences; unless the parties are bound by reciprocal interests, being in the same condition and station in life. The law-maker forgets that, not being in danger himself of falling into crime, and never having occupied a station in life which rendered him liable to its commission, his qualification for judging of the motives and feelings of men, who are drawn into crime, must necessarily be deficient and defective. They do not study the impulses of mankind, or one set of laws would never have been constructed for all kind of offenders; that is, if the idea of reclaiming any ever came across their minds. It is a paralogism to hold that the same law and treatment which applies to a thief, brought up so from the cradle, is fitted for the decently, morally educated man, who, under the influence of circumstances, (if they were inquired into,) commits an offence for the first time, which may admit of great palliation, or be wholly extenuated. The incorrigible rogues are incorrigible: being men,

“ Which any print of goodness will not take,  
Being capable of all ill.”

I pity them. The other offenders, under a really moral government, that is, one which legislates wholly with a view

of preserving morality, making the punishment of crime at least a secondary consideration, in the construction of the laws, thousands, who now fall victims to the vice of this metropolis, might be saved; and under a different mode of administering the laws, which gives discretion to the judges, ninety-nine out of one hundred, who do commit crime, belonging to that class which may be called the morally educated part of society, might be gathered again into the flock, retaining as high a sense of their social duties as heretofore; but herding and punishing them with those who never knew any good, will not accomplish this object. We hear much talk of prison classification, and prison discipline; the classing required is, to separate the offenders of habit from those of accident; the discipline for the latter should be gentle remonstrance, with imprisonment and simple food, till the natural tones of their minds and bodies are restored. Those who are born and bred in crime, possessing it as an inheritance, must be esteemed another race of beings. "All are not men who bear the human form." But.

" Who hath seen, or ere shall see,  
Man as himself, the secret spirit free?"

Education, circumstances, and even food, alter the flexible nature of man so much, that there is no animal on the earth exhibiting so many varieties in the same species. It is on this rock that our law-makers have foundered; they will not consider well the kind of men for whom they legislate: in their enactments against crime they jumble all classes together; in their punishments they mix up the apparently irreclaimable, with the decidedly reclaimable offender, thus augmenting every day the body of confirmed rogues, from the number of casual delinquents. No wonder that in England and Wales, within these last twelve years, crime has increased three-fold. Under the present system of indiscriminate punishment, if a man with a large family, through an

aberration from regular conduct, or temporary need, commits an offence, (perhaps of a trifling nature,) he is punished in the same manner as an old offender, even if he brings a character for honesty of twenty, thirty, or forty years previously. The monstrous injustice of measuring out punishment in this manner cannot but be apparent to every man; in cases wherein it is practicable to ascertain the truth, moral turpitude, as well as legal, should be considered; this was the object of the legislature, no doubt, in investing the judges with such extensive powers of discrimination in awarding punishment for the commission of crimes. The judges at the Old Bailey who perform the greatest portion of criminal business, without doubt; do the best they can in every case which comes before them: but under an amended system the history of every prisoner might be laid before the court: it is now left to persons in no way qualified for the business—persons who are irresponsible; besides it is done in the dark—under the rose—behind the curtain—the least innocent being unacquainted with the power till it is too late to avail himself of it; a power, the existence of which renders the whole of the proceedings at the Old Bailey court a spectacle of solemn mockery. Sometimes I have viewed the proceedings of the court, from facts which have come to my knowledge, as a travesty tragedy; the results, however, are generally more lachrymose than ludicrous. Cases might be cited until the public were surfeited with reading them, I will, however, relate one:—The suffering party, relying on the merits of his cause, neglected to apply to the recommendatory quarter; and now, mark the consequence! The town traveller of a wholesale house in the city was transported for fourteen years, under the following circumstances. He (the traveller) canvassed for orders, and collected his own accounts, but was not called on by his employers to make up his receipts of cash daily, but only once every fortnight, leaving him intervals of fourteen days to possess their money. One day his

wife's brother, who was a tradesman in London, came to him in a great consternation, saying, that unless he could borrow forty pounds that day he was a ruined man, informing his relation that dishonoured bills had been returned to him, which must be taken up immediately, adding, that if he could obtain the money he was sure of returning it in two days' time. The traveller, seeing his relation in this strait, told him that he had no money of his own, but if he could rely on its repayment in due time, that he had as much of his employer's, which he should not be called on to pay into the house for some days, and that he might use it. Having assurances given him that he might depend on the return of the money in due time, he, in an ill-fated moment, was induced to accommodate his brother-in-law with the forty pounds belonging to his employers. The subsequent day the tradesman was arrested for a heavy debt, and his embarrassed affairs (as it now turned out they were so) becoming known to his creditors, he was broken up, and in consequence unable to return the money borrowed of the traveller. In this dilemma the man took the honest and judicious resolution of telling the whole truth to his masters, who heard the particulars of the affair without comment; in the evening, however, while at supper with his wife and family, he was apprehended, and the next day committed on a charge of embezzlement. When the day of trial came, in the hope of mitigating the sentence, the brother-in-law attended with another person who was present when the money was lent, both of whom stated all the circumstances, and how reluctantly the prisoner parted with the money, doing so only on the solemn assurance of its being returned on the day named at the time it was lent; to this testimony was a character of the best nature added; notwithstanding which, the prisoner was sentenced to fourteen years transportation, the greatest extent of punishment the law allows for this offence. It is the practice of the judges at the Old Bailey always to increase the punishment when a ficti-

tious defence is made; and it is probable that in this case, hurried as it certainly was, the presiding judge took this view of it, and therefore gave all the punishment in full. Nothing, however, could have been easier than to have removed this prejudice, if time had been allowed. In that same session fifty old offenders were sentenced to seven years transportation, and double that number sent again on the town, after receiving minor punishments. No considerations—no respect to persons should prevent these things being looked into by the legislature. The wife of the traveller, and his three children, ultimately went to the workhouse, and became incorporated with the poor of the country, in which class it is probable they and their posterity will ever remain.

I have sometimes thought, witnessing the conduct of the judges at the Old Bailey, that they, seeing it impossible to make any impression on the hardened offender, appeared to make up for this disappointment by a system of terrorism over the more timid and less offending. Sometimes the practice of hurling large and decent families into utter ruin and poverty, in consequence of one deviation from the path of honesty, is defended on the fallacious principle that the law should make no distinctions. What, then, becomes of the supposed necessity there is for arming the judge with discretionary powers? But this, in fact, is a violation of all justice; every man should be judged by his general character, and not by the exceptions in it. Even in our superior courts there is often a disregard to that grand essential in law, namely—*justice*. In cases of libel, the judges look only abstractedly at the fact, throwing aside the relative situations of the parties coming under their judgments. I knew a man of fortune, and another who had no means but what he derived from his trade to subsist on; both were sentenced to two years imprisonment, and to enter into recognizances, &c. The former having property, and being a military man, the punishment was no more to him than going into garrison for



the term. In the latter case total ruin ensued ; his business was destroyed ; he became a bankrupt, and was left to endure all the horrors of a prison without even means to supply his daily wants ; and to this distress was added the knowledge of his wife and family being without bread to eat. And all this he underwent for an inadvertency, which happened in the hurry of his daily labours to conduct a work for the support of his family, being entirely free from any malicious intention ; whilst, on the other hand, strong personal motives actuated the party in committing the offence. *This is letting the current of justice go on uninterruptedly* : if punishment for like offences are to be equal, circumstances and the situations of the offenders ought to be taken into consideration. I shall have occasion in another place to revert to the cases of embezzlement ; my object here is to show that by recklessly depauperizing large families, not only are the parish rates augmented, but the numbers increased from whence the great body of delinquents are drawn. It is sending recruits to fill up the places of those depredators who annually fall by crime. I have noticed elsewhere, that an annual return should be made, of not only the different offences committed, but of the different classes of society from whence the offenders come ; if this were done, I will venture to predicate that it would throw much light on the subject of crime. Under the idea of an improved prison discipline meeting the objects of reformation, and prevention of crime, have many great writers fallen into error. Beccaria, Paley, Montesquieu, Pastoret, Bentham, &c. &c., all of whom appear, from their arguments, to entertain the notion that punishment, or the dread of it, will change the Ethiopian's skin ; we know it has turned the colour of the hair, but to suppose that it will teach the ignorant, or induce in a dark and untaught mind a disposition to learn, is a mistake too palpable to dwell on. Where the mind is dark, and the habits of vice are established, no system can avail. Even the great Bentham laid much stress on the

supposed effects of an improved system of prison discipline. But I say, do what you may with the animal you coerce, you will not alter his nature: send an ass to the *ménage*, will he return to you an Eclipse in action and figure? The body of London thieves (of whom I now speak) have no other ideas than to rob, having doggedly made up their minds to endure the punishment when detected. "It is not good that the soul be without knowledge." If these characters possessed any, you might inflict the severest on them—namely, convince them of their errors; but this can never be accomplished, after an education to crime has been given; you must, therefore, prevent the education by substituting one of a moral and intellectual kind for the rising generation, and then give employment—make man sociable to man! Let the rich consider the wretched condition of the poor, and give proofs that they do not think poverty a bar to their claim of belonging to the same species as themselves. Education will soften down the asperities of mankind, and teach them that mutability of feeling, and reciprocity of interests, are the only bonds of society. Oppression of the poor has ever been the downfall of empires. It overthrew the Roman state.

" A thousand horrid prodigies foretold it ;  
 A feeble government, eluded laws,  
 A factious populace, luxurious nobles,  
 And all the maladies of sinking states,  
 When public villainy, too strong for justice,  
 Shows his bold front, the harbinger of ruin."

Every cause for the increase of crime has been assigned but the right ones, namely—the errors of government, and the want of a controlling moral power in the country. They may, however, be further subdivided under the following heads:—

First. The want of a good system of general national education.

Secondly. The demoralization arising therefrom.

Thirdly. Increased by the severity of the laws, rendering the ignorant more reckless and desperate.

Fourthly. Legislating by wholesale for crime; that is, not considering the kind of offender more than the offence; not looking more to the causes which bring individuals into the commission of crime than the crime itself.

Fifthly. The want of consideration on the part of the rich towards the poor.

Sixthly. Laws so constructed as to divide society, and set one part against the other, tending to destroy the bond of reciprocity between the upper and lower classes.

And lastly. Want of agricultural employment for the poor.

Remedial measures.—First, only to be found in abrogating the present system of education for the poor, substituting moral and intellectual for rote tuition.

Secondly. Legislating for the improvement of the mind, more than the punishment of the body.

Thirdly. The repeal of all our penal laws, they being sanguinary and uncertain, consequently unjust in their operation.

Fourthly. The substitution of a regular ameliorated code, intelligible and plain to all men ~~who can~~ read; so constructed as to afford a fair opportunity to the first and casual offender for reformation, making punishment more certain, but less severe; particularly distinguishing the habitual delinquent from those who lapse into the commission of crime from accidental causes. Not to attempt

“Eodem collyrio mederi omnibus.”

Fifthly. A general amelioration of the condition of the poor, by giving them agricultural employment on waste, or land appropriated to that purpose; thus removing the superabundant population from large towns to the country.

“Bonum summum quo tendimus omnes.”

I repeat, if all crime be traced to its origin, the source will be found in bad education, and those who take upon themselves the onus of ruling a great nation, should look to the radication of all the evils of the state. Whatever may be the symptoms of a disease in the human body, a wise physician will use his best skill to trace the malady to its source, and discover the cause, by the removal of which only can he reasonably expect a cure; so in the body politic, whatever is hurtful to the community should be radically remedied—at least every effort should be made to effect it. In considering the present state of the poor, from which class spring vagrancy and crime, there is not an oasis in the whole view of the united kingdom; all is misery, going on from bad to worse: we must, however, not abandon our duty, but strenuously labour for that state of optimity which may amend these national evils. The first question is, What can be done for the useful, working, and willing able-bodied labourer? Give him the land which is his birth-right, and let him cultivate it for his livelihood! Secondly. The vagrants, who are able but unwilling to work, preferring beggary to labour: these it is who fill our workhouses, and are incubuses on the industry of others. Such should never be relieved with money; on application, a meal should be given them, and a ticket to go immediately to work, on land, which should be appropriated for the purpose a few miles from town. The provision of labour must be the *succedaneum* for money, or the poor and idle man will never cease paying his visits to the overseer. Thirdly. The maimed or the diseased, who cannot work: these only should be admitted into a workhouse, and for these it would more become the character of the people if regular asylums in the country were provided, and they were kept apart from paupers in general; it is a cruel and pavid situation to place a man in, when worn down with age and labour, after having contri-

buted probably for fifty years towards the support of the government and poor of the country, to associate him in his last moments with vice and ignorance. This is a question, perhaps, out of place here, but it is one which calls loudly on the feelings of all benevolent and good men to aid in redressing. The only way in which it is possible to reward the honest and industrious, but unfortunate, man in a state, is to ensure him a bonus, should he require (or rather need) it, out of what he has paid towards the support of others, that his exit out of the world may at least be decent, and in peace. God forbid that any known to me, or my readers, should ever live to end their days in a metropolitan English workhouse. Fourthly. The orphans, or such as have been abandoned by their parents: these are the children of the public, and should be sent to an asylum in the country, erected for the purpose, where an improved plan of education should be adopted, blended with labour—that of agriculture is preferable to all others; to further which, land should be attached to the establishment. In this manner a healthy constitution would be formed, and useful habits of industry and morality engrafted; but in workhouses we learn, from the testimony of all persons connected with them, that both girls and boys become idle, vicious, and unhealthy. And, lastly. The practising and abandoned rogue—who should be sent out of the country the first time he comes into the hands of the law, instead of being allowed the whole run of all the prisons, and time given him in the intervals to draw in and teach fifty more the road to crime. These provisions it is the duty of the country to carry into effect; there is nothing utopian or wild in the propositions; they appear to me to be not only highly practicable in themselves, but to be the natural rights of the poor population. The antipathy, however, which has seized our rulers against all general and *sweeping measures*, prevents the adoption of any really useful system;

their unconquerable *penchant* for legislative patchery, and their obtusity in seeing the utility of enlarged and liberal plans, obliterate every hope from society of an amelioration of their condition.

## SECTION II.

### *Plan of a better System of Education, and the Employment of the Poor.*

ON education, it is only necessary to say that morality ought to be the foundation of all tuition for the poor; and that the national schools have taught their scholars immorality, hence the demoralization of the rising generation. The very calling together so many low-born children daily, without some plan being first laid down for a moral guardianship over them, justifies the assertion, that they are taught *immorality*, and I will add (for I know it) *crime*, at these establishments. There is nothing of a mental nature performed in them: a hundred boys at one time are taught to bawl out Lon—lon—don—don, London, with a few more words, which leads them in the end to learn just enough of reading to enable them to peruse a two-penny Life of Turpin, or Jonathan Wild, proceeding to the lives of the bandits in regular course, when, with this, and they have taught each other such matter as they all gather from their *honest* and *virtuous* parents, their education is completed, they being fully qualified to figure on the *pavé* as a pick-pocket. It needed not inspiration, nor prophetic powers, to see that the Lancasterian schools must necessarily become *participes criminis* in disorganizing the relations of society, the very *locale* of the plan does it. I would not be understood to

oppose the principle of education for the poor; on the contrary; I look to this measure as one of the great levers which must ultimately turn the mind of the multitude from vice to virtue. To call the present mode of instruction giving an education, is to designate and distinguish things by their opposite terms. If you educate at all, it should be efficient to answer the end proposed; the mind should be at least so far improved as to form a correct judgment on the common affairs of life; they should be employed in historical and moral reading, till they quitted the school, and at stated times examined on these questions; every plan by which the mind can be expanded and enlarged should be resorted to in their tuition. Rules of faith and doctrinal precepts, unconnected with intellectual or moral improvement, appear to have been the great objects the promoters of the foundation of these schools had in view. With, no doubt, good intentions, no persons make greater blunders than the saints of the present day. They jump at conclusions, losing sight of the progressive operations of the human mind. They would have religion understood and felt by word of command, as the *manœuvre* of a line of soldiers are controlled. They invert the order of nature, forcing conviction, making belief precede judgment, instead of following it. The material essence of religion is deep seated within the pericardium, mingled, and in company with all the other feelings of the heart, which when ripe and matured make a journey to the head, to hold communion with the judgment, one sense instructing the other. When religion reaches the seat of reason, unaccompanied by her twin-sisters, the affections, what does she make of us weak mortals but bigots and fanatics? But if the warm springs of the heart are opened by early instruction, and the roughness of untaught man softened down to a temper of reciprocity with his fellow-creatures, then religion is sure to follow with her brilliant lamp, to light us through this terrestrial journey of darkness.

To attempt to plant religion in the mind, before the full development of the reasoning powers, and the passions which belong to our nature, is as futile as the attempt to plant the most tender exotic on an ice-berg. Give a good moral education, and religion will be sure to follow, in ninety-nine cases out of one hundred. Under the present mode of tuition a few hypocrites may be made, but no true religionists. Teaching youth mechanically to profess creeds, and imbibe rules of faith, or confess errors, is not the way to strengthen and brace the mind. Teach them to think—"Words without thoughts never to heaven do go." It appears to my view of education that no better plan could be adopted for large schools, than for the teachers in them to be provided with works containing axioms of life, both moral and useful, and even those of science which are of a common-place nature, and of every day practice. If a good set of such axioms were written, and the pupils in each class acquainted with them, and for a time exercised therein, a substantial foundation would be laid for the exercise of the judgment. It is only through early drawing the mind to the self-evident facts of nature that useful materials for thinking can be collected. The perceptive powers, under this mode of tuition, would be first enlarged. The considerations which produce a judgment, and a chain of arguments in its support, would follow as a matter of course. After which arrangement of ideas would accompany a growth of the body, and render complete the ability for mental discussion, without which education is all illusion. The imperative acts of the pupil only are useful for the improvement of the mind. Mechanical tuition is stultification of the mental powers. The use of the axioms, when acquired by the pupil, might further be rendered available, by the teacher devoting an hour each day to one class of boys: his duty should consist in giving out axioms, such as they had previously committed to memory, and requiring them to form a judgment thereon, one after the other; by this means each



pupil would insensibly be led into a mental discussion with himself and his fellow scholars; every day would the mind expand, and the pupil, panting for knowledge, would hail the hour of returning to school as one of the most welcome of the twenty-four. Terror and impetration on the part of the teacher would be superseded by a desire on the part of the scholar to press his master for more matter, with which his mind might find employment. But the teachers under this plan must be informed men—*Nemo docet quod non didicet*. I have for some time promised myself the pleasure of laying before the public a complete scheme, founded on this mode of tuition, together with an elementary work for the better elucidation of my views; other engagements, however, will prevent my completing it until late in the current year. Schools in every district should be established, containing not more than fifty boys or girls; one man, at a salary of not more than the weekly stipend of a police officer, would conduct such a school, in which the moral conduct and education of each pupil might be commanded, and early depravity checked. A master of fifty boys would find time to talk and reason with those under his care, leading them into habits of reflection and communion with each other on the various subjects introduced for their improvement. From the national schools, I never yet met with a lad who had the least notion of any self-exercise of the mind. A good and rigid system of moral education is the more needed for the children of the poor, as the habits of their parents are generally opposed to good example. At an early age they are carried to a public-house, filled with low company; swearing and drunkenness is always before them; no habits of frugality are taught them; and when money is obtained, luxuries and drink swallow up all in one day, reckless of to-morrow. Often without any home but the tap-room, or, if a home, no fire or parent to share it with them till the middle of the night, who, returning in a state of intoxication, only increases their misery, and, further,

vitiates their morals. Such is the condition of nine-tenths of the national school boys. Poverty compels the labourer to perform that duty which is essential to the well being of the whole nation. Poverty, therefore, is not the evil, but indigence and debasement which leads to crime. In the Lancastrian schools not the slightest effort is made to excite, or exercise the mind; not one moral axiom is inculcated; no precepts of principle are instilled into the mind; all is mere rote and mechanism; their scholars offer to the world the most extraordinary collection of tyros in crime ever seen or heard of in the history of it. Lord Brougham, who is certainly far above the common run of men, never could have given this subject his mature consideration when he became the patron of a national improvement of its subjects on such an absurd plan. Where he directs, the world naturally expects good will result, but *nemo omnibus horis sapit*, and “even Homer sleeps sometimes.” To sum up all, I say, educate the heart more than the head! God has given to all nearly equal affections; treatment either draws them out or stifles them. Sterne, in his quaint way, has most admirably, in the following words, pointed out the importance of starting in early life on the right course:—“You have all, I dare say, heard of the animal spirits, as how they are transfused from father to son, &c. &c., and a great deal to that purpose. Well, you may take my word, that nine parts in ten of a man’s sense, or nonsense, his successes and miscarriages in this world, depend upon their motions, and activity, and the tracks and trains you put them into; so that when they are once set a-going, whether right or wrong, ’tis not a half-penny matter, away they go clattering like hey-go mad, and by treading the same steps over and over again, they presently make a road of it, as plain and as smooth as a garden-walk, which, when they are once to it, the devil himself sometimes shall not be able to drive them off it.” Happy will be that day for England when a good and well-digested system of education and employment for the poor is practically adopted.

The heart sickens in contemplating the present appalling condition of the poorer classes; humanity revolts at the spectacle of thousands of half-naked human beings, starving in the midst of plenty, and still more so at the apathy and indifference evinced by those whose duty it is to make every effort for their relief. Nothing is thought of but coercion and punishment: the very beasts of burden are objects of greater consideration than the pauper; laws are made to protect animals from the lash, at the same time acts of parliament are passed, authorising churchwardens and overseers to punish any of the paupers who may be maintained in the workhouse, for the offence of profane cursing and swearing, or for the use of abusive language, or disobeying the reasonable commands of any person put in authority over them, or any other misbehaviour, with corporal punishment, or with confinement in the workhouse, which, being in itself a place of confinement, must necessarily be solitary imprisonment, for any time not exceeding forty-eight hours. Sir Samuel Romilly, in the House of Commons, June 5th, 1810, said, alluding to the Lambeth Poor Bill—"The fact, however, sir, is, that however unjust this may be, it is not the first time that the legislature has been guilty of such injustice." There are a number of these cruel private acts of parliament: it is well they were private, had they been known publicly, the humanity of the people would have roused them into resistance against such gross barbarity. These careless acts of cruelty and injustice, on the part of the arbiters of the law, have so soured the minds of the poor, who now form a considerable portion of the community, that they may be likened, in their unnatural state of degradation, unto an overloaded draught-horse, who, finding the burden too much for patient endurance, doggedly makes a stand, and though under reasonable usage willing to work, will not with any lashing of the whip again essay to touch the collar till the burden is reduced to a weight proportionable to his strength. The

greater part of the poor are subdued and paralyzed by the contemplation of their own miserable condition, and the forlorn and helpless state of their offsprings, for whom the general tear of pity should be shed. The hapless parents brooding over the insurmountable adverse circumstances of their fate, are deprived of all powers of action; for, while the mind contemplates its own troubles, it is acted on, instead of acting; when they become, in the language of their oppressors, "*lazy idle vagabonds*," who will not work even when it is offered at a remunerating price for their labour. The well-fed man reflects but little on the state of the poor man's body and mind in a *jejeûn* condition. Hunger, it is true, does most commonly stir all animals into action, but partial feeding for any length of time, combined with an agonised state of mind, arising from surrounding miserable circumstances, will inevitably superinduce inappetency, reducing the human frame into a kind of semi-torpid and vivid state, under which the mind becomes stultified and callous to the affections and amenities of life. All persons declared insane in the common acceptation of the term, become immediate objects of commiseration, and of national concern; liberal subscriptions are made to build asylums in every country throughout the land for their reception. The wealthy are loudly eulogized for their benevolence, but here self-interest is predominant. If madmen were allowed to go at large, and run a-muck, every man's life would be in danger; and who more tenacious of life than those who have wherewithal to secure all its luxuries and enjoyments? True charity is disinterested, "doth not behave itself unseemly, seeketh not her own, is not easily provoked, thinketh no evil." I say unto ye, rulers and landholders, let every man capable of labour occupy his rood of ground, and more in proportion for his family; restore the peasantry to the land of their forefathers, whom ye most atrociously hunted off the soil of their birth, compelling them to take refuge in large

towns, and finally preventing their return, by passing within these last forty years four thousand inclosure bills. You have seized their inheritance—the waste commons; and, in justice, you cannot do otherwise than make retribution, by giving to each a piece of land, if not free of charge, at least at a moderate rental. Such a measure would infuse into them a new spirit, animating their souls, and lighting up a feeling of gratitude, which would bind the extremes of society indissolubly in bonds of mutual interest. Do this, and the poor man will be affianced to you for ever. The Almighty God, whose omnipresence knoweth all motives and actions, and whose omniscience searcheth and knoweth all things, will then permit the recording angel to enroll your names on the page of charitable deeds, done in this world. Dispossess yourselves of aphilanthropy, and set to work seriously to re-construct society on a principle of universal good to all God's creatures; cease to talk, but perform. "Words are the daughters of earth, and things the sons of heaven." Of the happiness and misery of our present state, part arises from our sensations, and part from our opinions, but both are wholly influenced by circumstances; something is certainly apportioned to ourselves, but society, education, and more particularly, means, do all with most men. Compassionate, then, the poor man's case, and do unto him justice; talk not of religion while you continue to oppress; religion is universal love: show that you possess this religion yourselves, and there will be no need of acts of parliament to prevent the desecration of the Sabbath; give the poor the means of existence, they will then patiently attend to your notions on *sabbatism*. The ground was originally in common, God's gift to mankind in general; it is therefore wicked and unjust to occupy too much of it for mere purposes of pleasure, when others are starving, or driven into crime, which make those who occasion it *participes criminis*. As the world becomes more populous, the scarcity of land increases, and if the pre-

sent system of enclosure be pursued, without leaving any for the uses of the poor, as heretofore, the whole will ultimately be engrossed for the exclusive benefit of the few, who are rich, whilst the many, who are poor, must starve. The argument, that waste land cannot be profitably cultivated, is very well, as applied to the capitalist—he who sits down to make his calculations of expenditure, of labour, manuring, and draining, &c., and then of returns. It is well established, that every pound weight of refuse or manure, either animal or vegetable, will, under manipulatory cultivation, return four pounds; the poor man, therefore, if allowed to locate himself on any land, however bad, would gradually bring it into profitable cultivation; even if he only employed the overtime he might be enabled to spare from the labour he must perform elsewhere, to obtain food, while his own ground would be but partially productive. Through the agency of the winds of heaven, and the fowls of the air, the most barren rocks are brought to sustain vegetable production, and surely man's exertions added to these must ever succeed. The waste land in this country, by the law of God, belongs to the poor; the non-use of it implies an abandonment of it, and throws it open to the first comers, agreeable to the rule in the history of Abraham, and his nephew Lot; let the poor then possess their rights, and not only draw them nearer your own dwelling-places, but nearer to your own hearts. No longer carry on a war against morality, which may, at some period of history, end in the destruction of society, and carry our posterity back into a state of utter barbarism. The language of the poet is verified even now.

*“Fœcunda culpæ sæcula nuptias.*

*Primum inquinavère, et genus, et domos.”—HOR.*

Happy will be that philanthropist who shall live to see the deserving portion of the poor honestly and fairly dealt with. But, there is another side of the picture; thousands of this

class have broken through all restraints, human and divine. "The brain may devise laws, but a hot temper leaps over a cold desire." Thus it has been with some of the families of the poor, born and bred in wretchedness and want, and being of temperaments constitutionally impatient of restraint, they have plunged at once into crime, teaching their children to steal, even before they knew it to be a crime. Whole families, who never had any other calling but that of theft—aye, hundreds of such families are now in being in London who have continued the same course, some for twenty, thirty, and forty years, many of which I could point out by a reference to memoranda, made some time since. One old woman said last year, when her seventh son was transported, "Ha! I know not what I shall do now, poor Ned is going; he was a good lad to me, and, though I say it, he was as good a hand at his business as any in London." "O! then he was brought up to business," I replied. She rejoined, "God bless you, no! I thought he had told you, when you made his brief, that ours was a right sort of *cross* family," adding, "and so was their father's father, and good ones they all were: now there's little Dick, my eldest son's boy, but I think he'll never make the man his father did—he's dull; besides, he's not old enough quite, for any good business yet." Some of these pathetic mothers will, when warmed with the *cream*, speak of the numbers which have fell in their families with as much pride and exultation as the Spartan mother of old used to do, when numbering her sons who had fell in their country's cause. The increase of these families are daily going on, through intermarriages, and other ramifications of family connexions, and thus, in a great measure, is the problem solved, as to the increase of crime. Short as is this picture of the poor in London, and its environs, it comprises almost all that can be said of their history; it is an epitome which might have been given of them forty years ago, and will apply for ages to come, (making allowances for their pro-

gressive increase,) unless the legislature grapple with the subject at once. No moral or political truth can be clearer, than that something is defective in the present state of society; we find one portion of it setting at defiance all laws, made by the majority for the protection of the whole; and further, under the most rigid execution of these laws, the party who so daringly violates them is every day increasing its numbers. There must be some cause for this effect—some error in legislation; and I think it is discoverable in the propensity modern rulers have to legislate theoretically and speculatively, always keeping in mind the interests of the upper classes, and only hoping that their measures may at the same time serve the poorer, and in their timidity to pass any extensive general practical measure, lest its effect should in any way prejudice the present position of the privileged orders of society. With these feelings ever in active force, they try to persuade themselves, and the nation, that the people may be for ever ruled by the same laws, with a little occasional patching; and that no period can arrive when it may be necessary to abrogate a set of laws, and enact a new. In the Ashmolean Museum, at Oxford, there is a shoe, once belonging to a monk of existence many years back. It is made of pieces of leather, nailed together; each nail is well clinched or hammered down to prevent injury to the foot. As one nail or piece of leather wore away, another was nailed across without removing the old ones; this mode of repairing the specimen of antiquity now at Oxford must have been pursued for a considerable number of years, as there is now leather and nails enough, about the one shoe, to make several pairs, after the same mode of construction. Its weight cannot be less than ten pounds, and its constant accumulation must have so much impeded the progression of the monk, (especially if he wore a pair of them,) as to have circumscribed his perambulations to at least a half mile a-day, and this, if performed, must have been the result of an extraordinary effort of strength. We have got over the monk's



prejudice of shoe-mending, when shall we get over the prejudice of a bit-by-bit law-making? When shall we leave off patching an old garment with new cloth? When shall the limbs of the state be more freely unencumbered with old nails and leather? Every session some promise is made, and some bone, in the form of an act of parliament, is thrown down to amuse the public; discussion we have in abundance; they resolve and re-resolve, but still nothing efficient is done. Montesquieu is right, "*moins on pense plus on parle*." The wealthy man subscribes his money towards the support of a charitable institution, and then says, "Do I not do my duty?" No! you retard the object society wants, viz. legislation for general rights, and equal laws; no subscriptions, nor the establishment of institutions will put down poverty and crime; the poor want to be allowed to earn their own food; temporary and partial eleemosynary relief will never be a succedaneum for permanent and healthful employment. It cannot be denied, but this country is embellished with some noble instances of bounty and munificence, but why spend time and money in sciomachy, leaving the substance untouched? Why employ your time and means in baling out at the extreme end of the drain, dribblets of impurity, when by going to the cesspool at the other, you could stop up the source from whence all the feculent matter flows? "Lay not the flattering unction to your souls," that crime is occasioned by superabundance of population; as said before, it is committed by a party who have made it a trade, and which party is now too strong for you. Originally they came from the poor, who felt themselves oppressed; give them relief, and time, with proper laws, will annihilate the robbers. It is of no use disguising the truth; few like to utter it when they know it will be ill received, and still fewer like to hear it when it is uncomplimentary to themselves. The fact is, that English philanthropy is not of the true and genuine kind—it is spurious—that of ostentation. Words are of no use, unless embalmed in the heart;

and deeds, if misapplied, often worse than useless. I shall on this head be thought diffuse, and perhaps tedious; prolixity, however, every man will be accused of, who sits down to write on this subject, because all influential persons in the state have long since, I believe, given up all hopes of doing any thing for the amelioration of the condition of the paupers of the country. The only question being now, how the poor man is decently to be got rid of; hence all our schemes of emigration.

“O, but man, proud man!  
Drest in a little brief authority;  
Most ignorant of what he's most assured,  
His glassy essence, like an angry ape,  
Plays such fantastic tricks before high heaven,  
As make the angels weep; who, with our spleens,  
Would all themselves laugh mortal.”

Those who consider it a question of despair, impugn the Deity himself. The world was made for the happiness of us all, man only prevents the general enjoyment of it.

“Thy rack'd inhabitants repine, complain,  
Taxed till the brow of labour sweats in vain;  
Successive loads succeeding wars impose,  
And sighing millions prophesy the close.”

I wish in the fanciful theories of nature, so frequently promulged, that some reasoner would take up the doctrine of Metempsychosis, and persuade our rich men, that after they had enjoyed the good things of this life, their souls would transmigrate, for a second course of probation, into the bodies of embryo mortality, secundinely enveloped among the poorer classes of society; and that on the extinction of their lives in this latter state, they would be summoned to appear before their God, to answer for the deeds done in both stations of terrestrial existence; and that, on an impartial review of their conduct in each probationary state, would determine whether

their eternal residence should be taken up in Tartarus or Elysium. The man who shall firmly establish this doctrine on earth, will do all that is required for the poor, and will well merit deification; if this be levelism, it savours much of divine equality, and the apotheosis of such a man would, we may reasonably presume, be pardoned by the Deity. No blessing comparable to this could be conferred on the world; it would show the proud man that rank and possessions were indeed usufructuary, that all pains and pleasures at last were brought to one standard; it would remove the rich man's myopy of soul, and incline him to advocate a system of cænobiumism.

Now, the landholders withhold their advocacy for the settlement of the poor on land, under an apprehension of further multiplying the pauper population. Shallow reasoners! What hiatus put this into their heads? The fatuity of such arguments are easily answered; men in a state of idleness ever propagate their species faster than those who are employed; idleness begets depravity, and depravity engenders recklessness. What care men who have no interests in society about their posterity? But experience is the best teacher after all; how comes it that since the peasantry have been driven from the land, to take refuge in large towns, that the poor population has increased in exact proportion of the numbers calculated to have been so driven into cities, and that the progress of crime is in proportion to the increase of the poor? Nothing can stronger show the fallacy of their fears. Other countries do not exhibit the same examples of crime with an accumulation of their numbers. No! Because the inhabitants are allowed to occupy their natural position on the soil, and are not hunted into the towns to live in indolence and vagrancy, and where their necessities every hour in the day constrains them, from their earliest years, to do things which neither their hearts nor understandings approve. I may reasonably ask, will a just God consider them culpable

and deserving punishment, as traitors to their own consciences, when coerced by circumstances to the commission of acts repugnant to their own feelings. Captain Smith, who was tried at the Old Bailey for piracy, proved that his men revolted against his authority, and that subsequently, whilst on board, under their restraint, they (the men) committed several acts of plunder on other vessels. He, therefore, very confidently and reasonably put it to the court, whether he ought to be held responsible for the acts of his men under these circumstances. It was true, he had not, in one instance, expressed his dissent at the time the illegal act was committed, but it must be remembered that he was in fear of his life. The court admitted his defence was a good one, and freed him from the charge, throwing the whole blame on the sailors, who mutinied against his authority. Now, *si parva licet componere magis*. To compare the great judgment seat with the petty one. If the poor man should, at the throne of justice, say that he had appetites and desires, which were natural to all men, and which were irresistible; and that his fellow-men in power, revolting against the law of nature and justice, deprived him of the means of obtaining bread; and, that seeing his family in a state of starvation, being cold and naked in an inclement season, that he retained his self-possession as long as he could, but at length his nerves gave way, and perhaps with them his reason. Thus, placed in the world below, he confesses that he committed theft, to which practice he was afterwards bound by loss of character, and other circumstances, which arose out of the commission of his first compelled crime; that he was throughout an unwilling agent in the hands of a power over which he had no control, but who, although the primary cause of his being so situated, made severe laws to punish him for the act which they themselves had occasioned. What, I say, by parity of reasoning, would be the answer of the great Judge of judges? If the culprit were pronounced guilty; quere? would not his op-

pressors come in for a share of the punishment? A vast number of our laws are constructed at the expense of public morality, and have disjointed society; the poor man has been driven from his fireside to obtain a draught of bad beverage in worse society, where he soon acquires habits of drunkenness and gambling, and is prepared to become a victim to our *over merciful* code of criminal laws. Political wisdom is the result of experience and wisdom, but actual observation of ages availeth nothing with our rulers when the poor are concerned. Science and philosophy take advantage of experience, but in governments this rule forms an exception. The people are kept in ignorance, and then it is said, "Behold what wretches they are." All men are cast in nature's mould; all are sons and daughters of the same God, and entitled to consideration as such. Of the very worst, it must be said, "God made him, and therefore let him pass for a man." The poor man, however, whether honest or dishonest, is barely allowed this claim. God says, "My people are destroyed for lack of knowledge"—(Hosea iv. 8.) Christians, reflect on this declaration, and give the people knowledge! But it must be done when the mind is sequacious—in youth, when pliancy and susceptibility will aid you in the work of instruction. But our pseudo-philanthropists wait till all the fibres of sensibility are tough, and rigidly callous; they then form committees and societies, to debate how a man who has been bred up in crime may be tortured into honesty. I cannot refrain from inserting the following letter, which will speak for itself.

"SIR,—I am on the point of leaving England for Botany Bay, being convicted of picking pockets. I am a very young lad, and some people seem sorry for me; for my own part, I can never go any where to be worse used—any country will be as good for me as this, which is called mine.

"I was born in Dyot Street. I never remember my

mother; but my father's companions sometimes spoke of her as one who had been transported for passing bad money; my father used to look gloomy and sorrowful when she was mentioned, and never recovered without a glass of liquor: some people said she died broken-hearted in gaol, but I never heard the truth of it. In our street, he who thieved most cleverly was the most admired, and the only disgrace that could be incurred was the shame of detection. I sometimes, at the end of it, saw people ride past in fine coaches, and these, I supposed, had robbed, still more successfully. I knew nothing, and was taught nothing but to steal; and I practised my art with an industry which I thought most laudable. I have heard of God, and hell, and the devil; and they once told me, when the bell tolled at St. Giles's, that people went there to pray that they might go to heaven; but I saw nobody who seemed to believe this, and I thought these words, like many others, were only useful to swear by. The only thing I was taught to fear was a thief-catcher, and, though I eluded his vigilance for some time, he caught me at last. In prison the parson told me how I ought to have been brought up. He found that I had never been idle, that I had laboured in my calling, that I had never robbed my father, or cheated my landlady, and that to the best of my power I had done what I was told to do—and yet I was put into gaol, and, if I had not been a very little boy, the parson said I should have been hanged.

“There are some hundred boys in London who are all living as I lived; and when I was tried, a gentleman in a great wig talked very kindly to me, and if I knew what his name was I would send this letter to him; he said he would have a school in Dyot Street, where boys might be told what was right; and I think, sir, before they are caught and hanged, it would just be honest to tell them that they are in danger of it, and to tell them what is law, and what is society, and not to let them hear of it for the first time when they are tried.

"I am going, they say, among the the savages, and I never desire to come back ; the savages would have taken care of my education, have taught me to hunt, shoot, and fish, and would have told me how to be a great and good man ; but the Christians have not done so, and if it was not that I am sorry for my companions that are left behind, and hope the gentleman in the large wig may see this letter, I would not give myself the trouble of asking my fellow prisoner to write it.

" JACK WILD."

'This may serve for a whole volume on the subject, changing the words, "there are some hundred boys," &c., for some ten thousand, &c. A gentleman, recently from New South Wales, told me the following anecdote. He was present one day at the factory, or barrack, where the convicts are kept until engaged by a master, when a gentleman came in, and seeing a youth which he thought would suit him, he said to him, "Well, my lad, what are you?" "A London thief," was the boy's reply, touching his hat. "What can you do?" "Thieve, sir!" "No doubt of that," said the interrogator ; "but how was you brought up?" he continued. "To thieve, sir!" was the boy's answer again. "Nonsense! What was your father?" "A thief, sir." The gentleman now probably humouring the conversation, continued to inquire concerning his mother and family. It appeared there were five brothers and five sisters, all of whom he, in the same manner, said were thieves. Whether this boy's account of himself were true or false, it proves a want of a sense of shame, which a very little education will always bring, even among those in the heart of vicious society. These cases, with thousands of others, clearly show that the dissemination of pernicious principles are extensively promulged and instilled into the minds of a large number of juveniles rising daily into life ; common prudence, then, if no other considerations can influence us, demand a counteracting power, which is only to be found in a

well-digested system of general education ; at the same time, let the rich endeavour to conciliate the poor, and regain the affections of those whom they must employ. A deadly animosity now reigns between those who ought to respect each other ; distrust, reciprocal distrust, must be removed, they must feel one interest ; confidence and kindness must pervade all classes as heretofore ; they must cease to reproach each other with blasphemy and hypocrisy. Let the gentry pour into the hearts of the poor the soothing balm of commiseration for their condition, and the causes which have led to their distress. Let them cease sermonization till they have harmonized the minds of those whom they have injured ; tracts and homilies will then be a boon to them. It is only insult to talk to a man in a state of inanition, and with naked limbs, of the blessings he enjoys, and to tell him he ought to be thankful to God for his numberless comforts. Bad as is the state of the poor, time, under just and humane laws, will redeem them. It is a fallacy to say their case is incurable. There is no effect without a cause, the which here is known, (oppression ; ) remove the cause, and the effects will subside in much less time than the evil has been brought on us.

“ Our doubts are traitors,  
And make us lose the good we oft might win,  
By fearing to attempt.”

The first consideration ought to be to select those who are now in a state to re-occupy their former station among the farming labouring poor, and afford them such relief as may enable them to resume agricultural employment, by which their families and themselves may be supported. It is not poverty in itself which has brought us into this state of demoralization ; Poverty is as useful in a state as riches—she is the cause of all labour ; it is depravity, and Idleness its parent, and also that of discontent, which inflicts so much misery on society. Poverty has no such terrors in itself. there is no condition of life, sickness and pain excepted, where happiness



is excluded ; all situations have their comforts, with health and employment, which bring sweet contentment. The poor want not money—they must not have it ; it is not good for them ; but as obtained through labour, which is the only true cure for vice, which is the precursor of crime. The rich need not be told this ; they see enough of vice in their own grade, arising from the same cause—(want of employment). With respect to that class of the poor, on whom despair and crime have laid their iron hands and sealed for perdition, the first consideration are the children, whom the parents will most assuredly train and force into crime, if not prevented ; but here again arises the question of expense, which is answered in another place. Now, if the honest and industrious poor were given employment, and the juvenile thieves either secured, or in any way protected by a counter-education, crime, like the farmer's chimney when on fire, might be allowed to burn itself out without much danger to society. Until these inlets to crime are closed, the honest and industrious classes of society will, as the Roman states were, be inundated with Goths and Vandals ; and, like them, the more the law kills, the more numerous will they pour down on property, till in the end they will become too strong for successful opposition.

## CHAPTER II.

*General Remarks on the Prisoners confined in Newgate before and after Trial, and the Effects of Punishment in deterring Men from Crime.*

THE object of the penal law is the prevention of crime. The guilty are to be punished, that society may be deterred from delinquency. Have our laws had this result? This is a subject which has for a long time engaged the attention of both the legislator and philanthropist. Many chimerical theories have been advanced, which, when examined, have been found in no way applicable to the purpose for which they were intended. No plan hitherto adopted has made crime even stationary; it having progressed one-fourth in the last seven years.

To treat on any subject successfully, and to grapple with it fairly, it is necessary that those who write on the subject should be practically acquainted with all its bearings. They should have mixed with the parties, that they may become possessed of all the latent springs which influence their conduct. In laws relating to trade, when any alterations are contemplated, a committee of the legislative body is formed, and evidence procured from among those most likely to be affected by the measure, and who are generally best acquainted with the subject. This is esteemed the surest source of correct information, as doubtless it is. Allowances, however,

must be made for natural prejudices and bias to particular interests. So, in inquiries respecting the increase of crime, the best information is to be had from the offenders themselves. Obstacles certainly occur peculiar to such an investigation, in the characters of the parties to be examined, and the interest the examiners would think they had in misleading the examiners. To this are to be added their faithlessness and general depravity; and as few long accustomed to crime ever seriously reform, so as to take a sincere interest in the better regulation of society, little can be expected from them by any casual compunctions of conscience. Moreover, few traffickers in crime possess either education or ability to benefit the world by communicating their experience. In any case, such beings, long accustomed to trample on all principles, would be incompetent to assist us much in tracing the influences which draw so many into the trade of plunder, and by what spell it is they continue their vicious courses in the very teeth of the law, and at the foot of the gallows. Nearly three years experience in Newgate, and at the court where they are tried, have enabled me to arrive at certain conclusions. The circumstances under which I obtained these opportunities for observation is not necessary for me to state; suffice it to say, I was brought immediately into contact with the inmates of the prison, and that I had opportunities of seeing the prisoners in their unguarded moments—freed from all caution, and without their having had any motive for practising deception. During the period of my attendance I was employed in giving them advice, and was confidentially intrusted with their secrets for the purpose of defending them when in danger of punishment. I was, moreover, engaged as their amanuensis, both before and after their convictions, by which means I have become possessed of their true feelings, together with their standing and grade as professed thieves.

During the first eight months of my observations at Newgate, my surprise was much excited by the regular manner

in which the prison became occupied, over and over again, after each sessional clearance, by the self-same persons. It perplexed me much to account for the apparent uniformity of crime in the metropolis, the committals being on an average about fifty per week, accompanied by an unvarying increase of one-eighteenth in each session of six weeks. On a more intimate knowledge of the character of these men, I thought I soon discovered the cause. If all the crimes committed were of such a nature as might be supposed to arise incidentally out of the very character of man and the construction of society, in which some were exposed to great temptation, possessing but a small share of virtue, whilst others, blessed with a stronger portion of power to overcome the temptation, were but little subjected to it, no hope, in a population like that of London, could be entertained of ever remedying the evil: but it is otherwise, there being comparatively but very few cases of casual dereliction from honesty when the temptations and population are considered. All there is to do, therefore, is to get rid of a certain party, or set of men. There is a distinct body of thieves, whose life and business it is to follow up a determined warfare against the constituted authorities, by living in idleness and on plunder. The problem of their increase was solved when I saw so many of their known party let off every season with some slight punishment, by which means they were soon again at their trade; taking care, however, to send into Newgate thirty or forty young hands each before they would themselves be again caught. It is the practice of all the old and knowing thieves, who have the reputation of being clever at business, to draw in young ones, and make them do all that part of the work incurring risk. I knew one man of whom it was said upwards of a hundred had been "put away by him"—a term they have, when one is supposed to have been the cause of another's apprehension by leading him into crime. The term "desperate," as usually applied to these men, must not be taken in

its common acceptation—bold, daring, absence of fear, and careless of personal danger. They are all, without exception, pusillanimous and rank cowards. The desperation they possess is that of a determined and inveterate gambler; they are ever employed in calculating the chances for and against them, in every unlawful adventure they think of embarking in; if they can but make the chances in their favour, (that is, of escaping,) they will unhesitatingly engage in any scheme or attempt at robbery. If, however, the commission of it be attended with the least possible risk of personal danger on the spot, they will always forego the adventure; and they have their exact odds in favour of every species of crime. The higher the game, they say, the less the risk. The high and safe game, however, requires a capital, as in the more honourable walks of life, to make an appearance—to move about with facility, and, in what they denominate style. It is astonishing with what pleasure some of them will speak of the prospects they have of soon leaving off the dangerous walk of business they have followed, and embarking in that which brings more profit and less risk—each saying, “If I get off easy this time, I shall alter my game; I know I am a good workman, and ought to have been better employed.” The character of one is the character of the whole class; their manners and notions are all of one pattern and mould, which is accounted for by their general acquaintance with each other, and their habits of association. They have a peculiar look of the eye, which may be known by any one much accustomed to see them; and the developement of their features is strongly marked with the animal propensities. So very similar are their ideas and converse, that in a few minutes’ conversation with any one of the party, I could always distinguish them, however artfully they might disguise themselves, and attempt to mislead me. They may be known almost by their very gait in the streets from other persons. Some of the boys have an approximation to the face of a monkey, so

strikingly are they distinguished by this peculiarity. They form a distinct class of men by themselves, very carefully admitting noviciates into their secrets; he, however, who has graduated under one of their own approved body is unhesitatingly admitted into full confidence. He must, notwithstanding, prove himself acquainted with all the cramp terms peculiar to their craft, or he will still be considered "green," and not fit to be trusted. There is not one of the select who is not able to relate the whole history of any other individual in their body—how he first began, who first taught him, what he has done and suffered, &c. &c. They form one club, to whom all the *fences* are known, (receivers of stolen goods,) who will never purchase of a new hand without a proper introduction, for fear of "*a plant*" (being betrayed). An initiate is, in consequence, constrained to trust his spoils to some old offender, until he can himself become better acquainted, and gain confidence with the buyer.

In a recent work on Newgate,\* there is mention made of a man who was in the habit of going to a house in Wingfield Street, Whitechapel, and showing the boys large sums of money, and asking them to bring him goods to buy; from which it is understood he enticed them to commit crime. This man was in Newgate, under a sentence of fourteen years' transportation; and being known to some boys then in confinement, they mentioned to me that they had seen him with money, and that they thought him rich, saying how anxious he always was to purchase goods of them. But then the boys were known to him. It is a mistake to suppose he or any of his craft would go out to entice unknown persons to crime. The risk here is too great, and the parties too wary. Mr. Wakefield, to whom I told this anecdote, has misunderstood the matter. I mention this, conceiving there is a false notion regarding the temptations the receivers of stolen goods are

\* Facts relating to the Punishment of Death in the Metropolis. Second Edition. By Edward Gibbon Wakefield, Esq. 1 vol. 8vo. Wilson.

supposed to hold out to crime. It is said, if there were no receivers, there would be no thieves; and the authorities have been advised to aim more at the buyer than the thief—*cui prodest scelus, is fecit*. That the receiver is as bad as the thief, must be admitted; but if it be resolved to a question of policy, I say, remove the thieves if you can, who will for ever, while they remain at liberty, make others, and annoy society. If, by any possibility, all the buyers of stolen goods could be annihilated, in twenty-four hours their places would be filled up by others embarking in the trade. The profits are too large, and the chances of detection too remote, until the thieves are removed, ever to blot them, as a class, out of society. Every regular thief, let out upon the town, draws into crime, in the course of one year, a dozen more, which continues the species; and this will ever be the case until the system at the Old Bailey be altered, where there really appears to be much more anxiety to take out of society casual offenders than the born and bred thief, whose whole life has been devoted to plunder. I have said they reckon all their chances: 1st, of their not being detected in the offence; 2dly, of their being acquitted; and 3dly, of coming off with what they call a small *fine* (short imprisonment). The only punishment they dread is transportation; they hold all others in contempt; and I believe even that of death would lose its terrors, did it not lead to the greatest of all their dreads, viz. transportation for life. Death, indeed, has no terrors for any one, until met with at close quarters. Tell the thief of death, and he will answer, "Never mind, I can die but once!" Name transportation, and they turn pale. This cannot be too strongly enforced on the presiding judges at the Old Bailey. Full three-fourths of the prisoners, every session, are determined offenders, all of whom are regardless of imprisonment for a short period. Their spirits enable them to surmount such trifles, when the prospect of again returning to liberty and enjoyment is not very remote. "Go along, time!" they

cry; "only three months and a *teazing*. Never mind! that's over in ten minutes; (meaning the flogging;) I would take one for each month, if the *old fellow* (the judge) would let me off the imprisonment." If for crime *well-defined* transportation were sure to follow, there would soon be less business to do at the Old Bailey. A uniform plan of transportation for all known thieves would soon remove the whole fraternity of them out of society. It is of no use to pass this sentence on all brought to the bar for a whole day together, right or wrong, and then relax for a day or two, and pass minor sentences: it is the known thief who should be selected, and transported, being the only punishment he dreads. That they do fear this punishment I am convinced, notwithstanding what has been said by a gentleman who has recently written on this subject, and who had opportunities of seeing somewhat of these characters. I say *somewhat*, because, although he could daily, for three years, converse with them, yet he did not, in any way, employ himself in assisting them, so as to become thoroughly acquainted with their minds, except in cases wherein his feelings, as a philanthropist were called into action by a peculiar case of hardship or oppression; and there were cases of this nature daily occurring, strong enough to move one of cooler temperament than his. In his character of mere looker-on, he never could obtain their confidence; it is this which has misled him, and induced him to draw from real facts so many erroneous inferences. He thinks transportation has no terrors; I think no punishment so much dreaded. It is the manner in which this instrument of the law is used; it is the uncertainty of it which robs it of its sting, and renders it powerless as an *example*. When it is one day passed on an offender for stealing a *penny tart*, or a small loaf of bread, (I need not insert the names of prisoners who have been transported for these offences; they are to be found in the calendar,) and the next a hundred old and practised pickpockets allowed to get off with one or two months'



imprisonment, it is not to be expected they will hold this or any other punishment in dread until they are overtaken by it. Naturally enterprising and sanguine, they think but little of punishment when it is uncertain and remote, but much of their present pleasures, and those practices which bring them wherewithal to support their dissolute life. They calculate that but one in four of the number found guilty is transported, making a balance in their favour of three to one over and above the chances they reckon their skill gives them of committing crime without detection. As they cannot in any other way account for the number of old offenders being permitted to escape with fines, a notion is common with them, that the Recorder is afraid to transport more than a certain number, lest he should encumber the government, and increase the charges for their maintenance at home, or conveyance abroad, beyond what it would be prudent to incur. Imprisonment, as I before said, thieves regard not, if it be only for a short period. So ductile and flexible is nature to circumstances, that these men think themselves fortunate, if out of twelve they can have four months' run, as they term it; and I have no hesitation in affirming, they would continue to go the same round of imprisonment and crime for an unlimited period, if the duration of life and their sentences afforded them the opportunity. By a reference to the Old Bailey session calendar, it will be seen that about three thousand prisoners are annually committed to Newgate, making little short of four hundred each session, of which there are eight in a year. Out of the gross number, about three hundred and fifty are discharged by proclamation. Of these nothing can be said, as they must be considered innocent of the crimes with which they were charged, there not being *primâ facie* evidence to send them on their trials. There remain two thousand five hundred and fifty who are tried, with the progressive increase of four-sevenths annually. Some persons have supposed this accumulation of offenders bears a

regular proportion to the progress of population. As well may they assert that the demand for thieves in society regulates the supply, as in other markets of merchandise. The cause is in the mal-administration of the laws—the sending out so many old offenders every session to teach and draw in the more juvenile and less experienced hands—with the uncertainty of punishment, by the inequality of sentences for crimes of a like nature—to which may be added the many instances of mistaken, or rather *mis-directed* leniency, compared with others of enormous severity for trifling offences; all which tend to induce the London thieves to entertain a contempt for that tribunal. An opinion prevails throughout the whole body, that justice is not done there. I do not mean to say they complain of the sentences being too severe generally; for that would be natural enough on their parts, and not worth notice. They believe every thing done at that court a matter of chance; that *in the same day, and for a like crime*, one man will be sentenced to *transportation for life*, while another may be let off for *a month's imprisonment*, and yet both equally bad characters.

It only needs that punishment should be sure to follow the conviction for crime, and that the judgments should be uniform and settled, to strike terror into the whole body of London criminals. Out of the two thousand five hundred and fifty annually tried, nearly one-fourth are acquitted, leaving little short of two thousand for sentence in each year. Of these the average transported are eight hundred: deduct two hundred for cases of an incidental nature, *i.e.* crimes not committed by regular offenders, and there remain one thousand professed thieves who are again turned loose in a short period on the town, all of whom appear in due course again at the court of the Old Bailey, or at some other, many times in the revolution of one year. Here lies the mischief. An old thief will be sure to enlist others to perpetuate the race. There is no disguising the fact: the whole blame is

with the court whose duty it is to take cognizance of these characters. Whilst the present system is pursued, of allowing so many old offenders to escape with trifling punishments, the evils will be increased, and the business of the court go on augmenting, by its own errors. The thief is now encouraged to speculate on his chances—in his own phraseology, “his good luck.” Every escape makes him more reckless. I knew one man who was allowed a course of seventeen imprisonments and other punishments, before his career was stopped by transportation; a sentence which does, however, sooner or later overtake them, and which would be better both for themselves and the country were it passed the first time they were in the hands of the court as known thieves. Observing only a certain, and nearly an equal, number transported each session, they have imbibed a notion, that the Recorder cannot exceed it, and that he selects those to whom he takes a dislike at the bar, not for the magnitude of their offences, but from caprice or chance. It is under this impression they are afraid of speaking when in court, lest they should give offence, and excite petulance in the judge, which would, in their opinion, inevitably include them in the devoted batch of transports, of which their horror is inconceivable: first, because many have already undergone the punishment; and secondly, all who have not are fully aware of the privations to which it subjects them. Their anxious inquiry regarding every particular relating to the treatment, is a strong manifestation of their uneasiness on this subject. Yet Mr. Wontner and Mr. Wakefield (says the *Quarterly* reviewer) think neither transportation nor the hulks have any terrors for them. How they come to this opinion, I cannot imagine. If they draw their inference from the noise and apparent mirth of the prisoners when they leave Newgate for the hulks, I think their premises false.

The transports are taken from Newgate in parties of twenty-five, which is called a draft. When the turnkeys

lock up the wards of the prison at the close of the day; they call over the names of the convicts under orders for removal, at the same time informing them at what hour of the night or morning they will be called for, and to what place and ship they are destined. This notice, which frequently is not more than three or four hours, is all that is given them; a regulation rendered necessary to obviate the bustle and confusion heretofore experienced, by their friends and relatives thronging the gates of the prison, accompanied by valedictory exclamations at the departure of the van in which they are conveyed. Before this order arrives, most of them have endured many months' confinement, and having exhausted the liberality, or funds (perhaps both) of their friends, have been constrained to subsist on the gaol allowance. This, together with the sameness of a prison life, brings on a weariness of mind, which renders any change agreeable to their now broken spirits; the prospect of a removal occasions a temporary excitement, which, to those unaccustomed to reason on the matter, may appear like gaiety, and carelessness of the future. The noise and apparent recklessness, however, on these occasions, are produced more by those prisoners who are to remain behind, availing themselves of the opportunity to beguile a few hours of tedious existence by a noisy and forced merriment, which they know the officers on duty will impute to the men under orders for the ship. This is confirmed by the inmates of the place being, on all other nights of the year, peaceable after they are locked up in their respective wards. Those who suppose there is any real mirth or indifference among them at any time, have taken but a superficial view of these wretched men. Heaviness and sickness of heart are always with them; they will at times make an effort to feel at ease, but all their hilarity is fictitious and assumed—they have the common feelings of our nature, and of which they can never divest themselves. Those who possess an unusual buoyancy of spirits, and gloss over their

feelings with their companions, I have ever observed, on the whole, to feel the most internal agony. I have seen some thousands under this sentence, and never conversed with one who did not appear to consider the punishment, if it exceeded seven years, *equal to death*. May, the accomplice of Bishop and Williams, told me, the day after his respite, if they meant to transport him, he did not thank them for his life. The following is another striking instance of the view they have of this punishment. A man named Shaw, who suffered for housebreaking about two years since, awoke during the night previous to his execution, and said, "Lee!" (speaking to the man in the cell with him,) "I have often said, I would be rather hanged than transported; but now it comes so close as this, I begin to think otherwise." Shortly afterwards he turned round to the same man and said, "I was wrong in what I said just now; I am still of my former opinion: hanging is the best of the two;" and he remained in the same mind all the night. The first question an untried prisoner asks of those to whom he is about to intrust his defence is, "Do you think I shall be transported? Save me from that, and I don't mind any thing else." One thing, however, is clear: no punishment hitherto has lessened the number of offenders; nor will any ever be efficient, until the penalties awarded by the law unerringly follow conviction, especially with the common robbers. There requires an immediate alteration of the mode of removing convicts to their stations. The expense of land carriage is enormous as now managed, and quite unnecessary, as it would be much more conveniently performed, by a vessel constructed for the purpose being brought up the Thames to Blackfriars Bridge. The present system is continued only on the principle of its being a city job, and throws money into the hands of those whose emoluments are already sufficiently great.

Turn over the pages of the Old Bailey session papers for years past, and you cannot but be struck with the anomalies

which are there apparent, with respect to crimes and the sentences which have followed. The impression a perusal of these papers made on my mind, was as if all the business had been done by lottery; and my observation during twenty-two sessions on the occurring cases has tended to convince me, that a distribution of justice from that wheel of chance could not present a more incongruous and confused record of convictions and punishments. In no case (always excepting the capitals) can any person, however acute and experienced, form the slightest opinion of what the judgment of the court will be. Of this the London thieves are fully aware. I never could succeed in persuading one before his trial, that he was deprived of all chance of escape. They will answer, "Look what a court it is! how many worse than me *do* scramble through; and who knows but I may be lucky." What men know they must endure, they fear; what they think they can escape, they despise: their calculation of three-fourths escaping is very near the truth. Hope, the spring of action, induces each to say to himself, "Why may I not be the lucky one?" THE CHANCE THUS GIVEN OF ACQUITTAL IS THE MAIN CAUSE OF CRIME. I do not mean to say three-fourths come off free; they are subjected to some kind of punishment, (excepting a few cases of judgment respited :) the others feel, no doubt, what they undergo, but it is only as a soldier in the fight considers a scratch—otherwise coming off with a whole skin, being ready for action again. Another evil arises out of this irregularity of judgments. All punishments are rendered severe and useful in proportion as the offender feels he deserves it, and is conscious of having only his *quantum meritis*. This the convict can now never feel; seeing his companion in crime let off for a few months' imprisonment, he (his companion) having been guilty of an offence equal to his own, and for which he (the convict) is transported for life. Those connected with the court, in the conversations I have had with them, say, "Cir-

cumstances of character occasion the apparent anomalies ;” being unable, or perhaps unwilling, to give a better. That a good character does not avail the prisoner, or direct the court in its judgments, may be seen by a mere inspection of the printed trials, and is better known to all who have watched the proceedings of this court for any time. Hundreds of cases might be cited to illustrate this fact. I remember the case of two butchers, whose briefs I wrote, which occurred last year. One was an old, the other a young man, both having been in the employ of the prosecutor. They were charged with stealing a breast of mutton from their master : both were found guilty. The old man had persons to speak as to his character for honesty for forty years last past (his former masters ; ) the young one had not a solitary witness to say a word for him. The former was sentenced to fourteen years’ transportation ; the latter to six months in the house of correction. When the prosecutor heard of the circumstance, he got up a petition to the secretary of state for the remission of the sentence, in which he stated that on the trial he himself had given the old man a good character, and not the other. Instances of this kind occur out of number to confirm the rogues in their preconceived notions of the uncertainty of punishment, and that “ the greatest crimes come off the best.” This is an aphorism among the thieves. I have seen some of them, after being sentenced by the court, dance for hours, calling out continuously, “ Did I not tell you all, the biggest rogues get off the best ?” The scene in the several yards of Newgate on the sentence-days, after the judgments have been passed, defies any description on paper. Some will be seen jumping and skipping about for hours, frenzied with joy at the very unexpectedly mild sentence passed on them ; others are cursing and swearing, calling down imprecations on the Recorder, for having, as they say, so unfairly measured out justice ; all agreeing there is no proportion in the punishments to the crimes. It may be

said, it is of little import what these men think, so they are punished. But is it of no importance under what impression the others are discharged? If the discharged feel (as assuredly they do) that punishment is a matter of chance, they return to their habits as the hazard-player goes again to the dice, in hopes of coming off a winner, and reimbursing himself for former losses. There is another evil comes out of these unequal sentences. The discontent it produces on the minds of those who fall under the more heavy judgments, which militates against their reformation: instead of reflecting on their situation as brought on by themselves, they take refuge in complaint and invective, declaring they are "sacrificed,"—in their own language, "murdered men." I have often said, "Why complain? You knew the consequence of detection." "Yes," would be the reply; "but look at the case of Tom — and Bill —. Not that I am sorry they have got off; but is it not a shame to give me a *lifer*, and they only a month each?" Such answers are always given when any attempt is made to reconcile them to their fate. They carry this feeling with them to the hulks, where they amuse each other with all the tales of hardship within their knowledge; meditating revenge, by which they mean becoming more desperate in crime, and making reprisals on the public, when they shall be again at large. They become imbued with a notion the judge has more to answer for than themselves. Opinions of this nature are very common among them, and prevent the discipline to which they are submitted having its proper effect. Minds in the state of theirs seize on any supposed injury to brood over and stifle their own reproaches. Of this *dernier ressort* they would be deprived, if equal sentences were passed on all for like offences, being known offenders. They are now all ill-used men, by comparison with others who have been more fortunate. The present system holds out so many chances for the offender to escape, that it acts as an inducement to continue his practices,



and to all loose characters, not yet accomplished in the art of plunder, to become so. Again, by the discharge of so many known thieves every session, so many masters are sent into the town to draw in and teach others, by which a regular supply is brought up to fill the ranks of those who fall in the conflict.

There is no known crime, operating to the injury of society, for the punishment of which a statute has not been provided, and the penalties in which generally have not been considered too severe. If, then, it be not for lack of Draconian enactments that crime increases, the error must lie in the administration of them. An examination into the constitution of the court of the Old Bailey, and the manner the business is there performed, will, I think, prove this to be the case. The monstrous acts of carelessness, and consequent injustice, emanating from the Old Bailey court, are incredible to persons who have been accustomed to consider it, like others, pure and unvitiated by patronage and influence. No one unacquainted with the business of the place can possibly have a conception of the number of persons who influence the judges in a multiplicity of cases every session,—always excepting the capitals, because the law relating to them, be it good or bad, is clear and defined. A sentence of death always follows the conviction, after which the prisoner's fate is in the hands of the king and council. The Old Bailey court is under the jurisdiction of the lord mayor and the court of aldermen, one of whom must be on the bench to complete a court. This body elects the judges, consisting of the Recorder and Common Serjeant, who have an assistant judge, now Serjeant Arabin, all of whom are in daily intercourse with the other city authorities. Throughout the year, meetings out of number take place on city business, besides dinner and convivial parties, at which the aldermen and other gentlemen of city influence are constantly in the habit of meeting these judges, on the familiar terms of intimates; consequently,

through these channels, any representation may be made to a judge before trial, either for or against the prisoner. Tales may be poured into his ears, day after day, in various ways, so that the judge himself shall not see the motive, until a prejudice be effected, which renders him unfit for his office. It may be asked, what motive any of these gentlemen can have in prejudicing the case of a prisoner? I answer, none personally; but when it is considered they have all been in trade, and have numerous connexions, either commercial or otherwise, in all the grades immediately below their own, and looking at all the ramifications by which society is linked together, especially in this metropolis, it is easy to conceive that through such channels claims will be made on them not always to be resisted, and from them to the judge. That they do interfere I know, as do all others any way connected with the court or prison. It is not a postulate, but a demonstrable fact; not an occurrence now and then, but an everyday affair. All who know any thing of the internal machinery of Newgate and the Old Bailey, know the truth of this statement; and that there are other undue influences exercised of a more pernicious nature, of which I shall speak presently. One case out of many known to me I will relate. A linen-draper's shopman was committed for robbing his master's till, marked money having been found upon him. A few days after his committal he was recognized by one of the turnkeys, who had formerly been servant to his father, an officer in the marines. The man took an interest in the young linendraper's fate, and four days previous to his trial told him, in my presence, that he had managed his business, but could not get him off for less than three months' imprisonment. He was subsequently sentenced for precisely that term. In this instance we begin with the lowest instrument, a turnkey! yet it went up, step by step, until it reached the judge, who acquiesced in a sentence previously arranged by another having a very different duty to perform.

In the same ward with this young man were others whose offences did not exceed his, yet they were sentenced to seven and fourteen years' transportation. That it is highly proper the judge should be allowed a discretion in every case, must be admitted; but is this discretion to allow others *out of court* to do their business? I should have said, the prisoner in the last case cited had no person to give him a character. The turnkey's conduct I applauded, as it proceeded from gratitude to the family. He is not to blame; and I should not have mentioned the circumstance, but to show how certain it is that the court suffers itself to be led by others.

In every session there is a small class of prisoners very opposite from the regular thief, consisting of clerks, and others in a similar walk of life, many of whom have probably for the first time offended against the law, by embezzlement, or otherwise robbing their employers. In these cases the sentences run in extremes; the fullest penalty of the law being exacted in some, while others are fined a shilling and discharged, or, having their judgments respited, are allowed to go at large, in the hope they will sin no more. Here, if any rule of action could be recognized, and character had its weight in court, all would be fair; but unfortunately it is not so,—some, having the best of characters up to the moment of the commission of the offence, are sentenced to the severest punishments at the bar,—others, without any such advantage (at least in open court,) escape entirely free. IN ALL SUCH CASES IT IS INFLUENCE WITH THE JUDGES WHICH PRODUCES ITS DISPARITY. It has often happened, when I have applied to make a prisoner's brief, that a letter would be put in my hand; on reading which, I learnt some friend, or father's friend, or friend's friend in the second or third degree, had seen a certain alderman, who had made a promise to interfere. Probably I should be asked if he (the prisoner) might rely on the success of the interest; in which case I invariably told them they might be sure of his (the

alderman) having the ability, if he could be brought to exercise it. I was never mistaken; when the promise was made, the party always got off, and the instances within my own knowledge are not a few. This influence is often used in a more unjust manner. When a confidential clerk or warehouseman is charged with embezzlement, it not unfrequently happens the prosecutor has a motive for being anxious to secure the entire riddance of the prisoner, by having him sent out of the country, he (the prisoner) being in possession of secrets which it might not be so well to have divulged. To accomplish this, hyperbolical reports of the man's extravagance are circulated—his having kept one or more mistresses, &c. &c.—that he has been doing this for a long period, by robbing his master. All this, poured into the proper city channels, never fails to reach the judge who tries him, and produces the object sought, viz. transportation for fourteen years. Few will be disposed to complain of the instances of mercy; but it is the mode of doing it with which I find fault, and which makes it an abuse of justice. The pure stream is polluted—a door is open by which the worst of mischiefs enter. This can only be reformed by the appointment of judges out of city influence. There is no prejudication with the regular judges of the country. In their hands the course of justice goes on in one pure and uninterrupted stream. The lives and liberties of nearly three thousand human beings come under the cognizance of the Old Bailey court every year. Does it not appear extraordinary that the management of a business of such national importance should be in the hands of judges who are not one remove from the middle classes of the community, and who, it is well known, mix every day with their fellow-citizens, so as to hear every current tale connected with the very cases in which they are a few hours afterwards called on to adjudicate—often coming into immediate contact with the prosecutors, who, for reasons before stated, have occasionally an interest in prejudicing the judge? Calumny is often added to

oppression, if but for the sake of justifying it. The dinners during sessions are very bad things, and assist much in working mischief. There the city judges, lord mayor, aldermen, sheriffs, and many others, sit down together every day during sessions, talking over all the affairs and occurrences of the day, as they may chance to be brought on the tapis. There any wish may be expressed to a judge regarding a prisoner, and story told without the accused having the opportunity to rebut it—any enormity softened down to a venial offence, or any peccadillo swelled to a most atrocious crime. All who know any thing of the city corporate body are aware that they are not only divided into political parties, but also those of sectarianism, and that there is a puritanical party, who are so extremely tenacious of any member of their sect coming to harm, that under their protection getting into Newgate is of no consequence. Hence the fine of one shilling and discharge of the cheesemonger's clerk who had thirty-two cases of embezzlement against him, and to which he pleaded guilty, being so advised, which is usual when a prisoner has a friend to protect him, as it avoids a trial, and he passes through the ordeal unobserved. This man told me his sentence BEFORE HE WENT UP TO THE COURT, and borrowed a shilling of a person to prepare himself for it. Letters were inserted in the "Weekly Dispatch" from the firm this man had robbed, inquiring who advised the late Common Serjeant to pass so *just* a sentence, which enabled the man to join an opposition house to the prosecutor's within a few days, to their great prejudice. A promise was given that an inquiry should be made; it has, however, passed away, like all promises of this nature. Another extraordinary feature in this case is, that some other person had promised to protect the prisoner from transportation, and the prosecutors had been led to expect a sentence of two years imprisonment in Newgate, (so they expressed themselves in their letter to the editor of the "Weekly Dispatch,") with which they were satisfied. The prisoner, however, sub-

sequently found another friend to interfere for him, who was less ceremonious in matters of justice, and the payment of a shilling was deemed a sufficient expiation for the crime of embezzling thirty-two separate and distinct sums of money. I have known many offenders get off with a nominal punishment, by having letters written to the judge, at the Old Bailey, from some person of known consequence. These are generally procured through some relation, who having access to the parties, excite their feelings on behalf of the prisoner. These letters are generally couched in the following strain. "That they know (or have been well assured) that the prisoner has hitherto borne a good character; that they would themselves have attended and said as much in court, but that peculiar engagements precluded the possibility of their doing so; they, however, felt it a duty to communicate what they knew of the parties, and hope the court will allow the prisoner an opportunity of redeeming his good character, by passing a light sentence on him." Such letters, if coming from what, in common *parlance*, is called a great man, are always influential over the minds of the judges. I shall avoid comment on this practice; I only state the fact, knowing it to be so, through the prisoners themselves, who, in many instances have apprised me beforehand that they must decline incurring any expense for a defence, having such friends to write to the judge, &c. &c.

The judges say they never suffer any thing extrajudicial to influence them. How do they know that? No one knows himself, and there is no security but by removing the possibility of his coming within the sphere of such pollution to his office. Let him be placed on a pinnacle of more importance, out of the reach of these gossips. If it were possible, a judge ought to descend from the upper world to the seat of justice, untainted and unprejudiced by any knowledge of the matter at issue. In all other courts of law this desideratum is obtained, as nearly as human arrangement can approximate to

such an object. If it be thought proper, in a question involving a consideration of a few pounds, that a superior law officer of the crown should preside, of how much more importance is that of life and death, of liberty and character; a question comprehending the interests of so many—the fixing a stamp of infamy on the father of a family, and in which a wife, children, and relations, are all concerned! It is true that, during the first days of each session, one or more of the fifteen judges attend to try the capital cases; but they do not always go through the whole of these, leaving some for the Recorder. It is remarkable how the auditors and prisoners are penetrated with the manner and patience of these judges, as contradistinguished from the hurried way in which the trials are usually conducted in these courts. The effect it has on the prisoners is astonishing, notwithstanding the awful sentences which invariably follow in these cases, viz. death. They are generally satisfied they have had a fair trial; and it is a remarkable fact, that none who are tried by the city judges ever think justice has been done them. However guilty they may be, they expect a chance on their trial, and decent treatment while they are undergoing it. The most brutal are sensible of the difference so apparent when they appear before what they call “a real judge.” I have seen them come from the court, after such treatment, positively pleased, although found guilty, saying, “I am guilty fair enough: the judge would have let me said any thing, he is such a nice old man.” I have observed the demeanour of these men subsequently to be always better than those who could never get rid of the notion they had not had a fair chance on their trials.

## CHAPTER III.

COURTS AT THE OLD BAILEY, AND THE NECESSITY OF AN  
APPEAL COURT.

## SECTION I.

*Hurried Trials, and Treatment of Prisoners in Newgate.*

THE rapid and indecent manner in which the trials are usually conducted at the Old Bailey session-house is a constant theme of censure by those who have ever entered that court. For several sessions I made a calculation of the average time which each trial occupied. I never found it exceed eight and a half minutes, notwithstanding many cases engage the court occasionally a whole day; and in the old court, where most of the capitals are tried, they usually, on the first, second, and third days of the sessions, severally take many hours. The average of eight minutes and a half is made on both the courts, and takes in all the prisoners tried for eight successive sessions. The rapidity with which the trials are despatched throws the prisoners into the utmost confusion. Fifty or sixty of them are kept in readiness in the dock under the court, to be brought up as they may be called for. These men, seeing their fellow-prisoners return tried and found guilty in a minute or two after having been taken up, become so alarmed and nervous, in consequence of losing all prospect



of having a patient trial, that in their efforts at the moment to re-arrange their ideas, plan of defence, and put the strongest feature of their cases before the court as speedily as possible, they lose all command over themselves, and are then, to use their own language, taken up to be knocked down like bullocks, unheard. Full two-thirds of the prisoners, on their return from their trials, cannot tell of any thing which has passed in the court, not even, very frequently, whether they have been tried; and it is not, indeed, uncommon for a man to come back, after receiving his sentence on the day appointed for that purpose, saying, "It can't be me they mean; I have not been tried yet;" conceiving, from the celerity with which the business was performed, that he had only been up to plead, or see a fresh jury empannelled, for which purpose he had been probably several times called up in the course of one or two days waiting in the dock. With countrymen, whose habits are slow, there is sometimes no possibility of persuading them to the contrary. There are, it is true, some of them most wretchedly stupid; this, however, gives them a greater claim to our consideration; and whatever may be their crimes or condition, it is proper they should be made sensible of their having justice done them on their trials. Under the present system, they can never feel satisfaction on this head. It was a boast at the Old Bailey, that a recent city judge could dispatch sixty or seventy trials a-day; and a lament was made that his successor did not so successfully drive on the business. With the knowledge of these facts, can we wonder that many serious mistakes should occur? The evident anxiety of all the city judges to proceed with indecent and unjudicial haste with the business of the court, makes them frequently petulant at any interruption or impediment to their usual despatch, which manifests itself in much acrimony between themselves and counsel; all of which tends to throw the prisoner off his guard, and prevents him asking questions which might give the whole proceeding a new turn, and which he recollects

after he comes out of court. Hence arises all that subsequent explanation and complaint which gentlemen connected with the prison are constrained to endure from the prisoners and their friends, after the trials are over, every session. The judges have an idea that the business of the court could not be got through in any reasonable time, if the trials were not expedited in the way they now are; forgetting that any thing done in a hurry is never done well. The general call for a court of appeal is occasioned by the many errors which emanate from the present system. That such a court has been long needed, is the opinion of many competent to form a sound judgment in these matters; indeed, it is surprising, in these days of legal reform, that such a court has not been long since established. In a case where a few pounds is the question at issue, if the party against whom judgment has been awarded feels himself aggrieved, and thinks he can bring new matter forward to re-establish his case, he may apply to the Court of the King's Bench for a new trial, stating his reasons for making the application. This is but fair, as it gives him the opportunity of repairing any error or lapse which may have occurred by an oversight of his own, or of his attorney. Not so in cases where a man's *life*, *liberty*, and consequently all his *property*, are at stake. Here the decision is final, although tried before an inferior court, and although he should be indisputably able to show his innocence. Let no one say the occurrence of such cases is rare—that there are too many is certain, the truth of which will be but too apparent, when a court for a second hearing is open to the many unfortunates who are now sacrificed to a system which would have disgraced the Scythians in their most barbarous age. It is true a statement may be laid before the secretary of state; but the consideration of it is optional and gratuitous on his part; and there is but little chance of any petition, or other documents, having attention, unless the same be forwarded through some influential individual, who must in person urge

the prayer, and take infinite trouble to press the merits of the case on the attention of the secretary *himself*. Were it, however, otherwise, and every facility afforded to petitioners, and immediate attention given to those who might be thought deserving of it, after all, it is but an extra-judicial proceeding, which at most only restores the party to liberty, without giving him his lost character, or reimbursing any of his losses. That cases of such a nature do frequently occur, is proved by a reference to the secretary of state's office, where it will be seen that very often pardons are granted a few weeks or months after sentence has been passed on prisoners for very heavy offences. I have a long list now before me of these cases, but will only, on this occasion, insert two which came under my own observation, and one of which I got up for the purpose of laying before the secretary of state. In the latter part of the year, 1830, a man named Price, who lodged with a lady residing at Fulham, was convicted of robbing her of plate, &c., under rather extraordinary circumstances. He persuaded the prosecutrix to conceal her property in the garden, under a notion that the house was going to be attacked by burglars; this property was ultimately lost, and it would appear that Price was the thief. The court sentenced him to seven years' transportation. None of the property was ever afterwards found, nor was any article produced on the trial. A few months after his conviction, the prosecutrix caused a master carpenter residing in the neighbourhood to be apprehended, who was doing some work for her at the time the robbery was said to have been committed. This unfortunate man was put on his trial at the Old Bailey; he had some property, and a most unexceptionable character. He was of a mild and timid nature, and, moreover, very nervous. Such were his feelings when at the bar, that he scarcely heard a word of the evidence which was given against him. When the judge, however, summed up, he observed that much stress appeared to be laid on the circumstance of his having brought

a key to the prosecutrix's house on the morning the plate was supposed to have been lost. As this related to a fact he could in an instant explain, he was roused, and made an effort to call the attention of the judge; but being rather roughly and peremptorily commanded to be silent, it had such an effect on him that he neither saw nor heard any thing afterwards. He was found guilty, and sentenced to seven years' transportation. He was, however, retained in Newgate, in consequence of the interference of some friends, and the clergyman, in conjunction with some gentlemen of influence in the parish, subsequently taking up his case: his innocence was made manifest, and in a few months after his conviction, a pardon obtained for him. This person has a young family, and other strong inducements to remain where he has acquired some little property, and has a house of his own to dwell in. Still, the circumstance of his conviction remains a stain on himself, and may be a reproach on his children. These considerations make him contemplate emigration to America. The other was the case of a young man of a good character, the son of a respectable tradesman (a bookbinder) with a large grown-up family, whose distress at the circumstance I am about to relate was of the most poignant nature. He was tried and convicted of stealing a trunk containing linen, and sentenced to seven years' transportation. In this case the judge and counsel (Mr. Clarkson) had some high words, which appeared to irritate the former, and it is thought he laboured hard for a conviction. All who have been much at the Old Bailey court must have observed, when any dispute arises between a counsel for the prisoner and a presiding judge, how fatal it generally is to the prisoner, whatever may, in the progress of the trial, come out in his favour. Is this the result of long practice in that court, which hardens all within, and makes them self-willed and impatient of restraint? It appeared that the prisoner went into a place of convenience, situated in a public

court, whither he was driven by a call of nature. In this place the empty trunk was found ; and a girl, the daughter of the prosecutrix, deposed to having seen somebody like the prisoner go down the court with a trunk on his shoulders. He was apprehended two days after this circumstance ; and the additional evidence of two policemen being procured, occasioned his conviction. Subsequently it was discovered that the policemen themselves stole the linen, and buried it in a garden, where it was afterwards found by another officer, who heard them give orders regarding it. The two officers who gave their testimony against the young man were shortly afterwards convicted of compounding a felony, and sentenced to two years' imprisonment each in the house of correction, where they now are undergoing their merited punishment.

These facts were laid before the secretary of state, of which not the slightest notice was taken for six months. At length, a gentleman confined in Newgate for a libel, feeling very much for the young man's wrongs, wrote to the secretary, and received a reply from Mr. Phillipps, the under-secretary, saying, it should be taken into consideration ; on the receipt of which, this gentleman, who was very indignant at the treatment the young man received, wrote another spirited letter, saying the case needed not a moment's "*consideration*," as it only required a glance at the documents to see the accused was an innocent man. Two days afterwards his pardon was sent to the prison, and he obtained his liberty. In both these cases it is evident, if no person unconnected with the prisoners had interfered, they never would have been noticed by the secretary, or those who act under him ; and when it is considered how much this office is crowded with applications of a like nature, the majority of which are made up of false statements, it cannot be expected that a *bonâ fide* case of innocence should very readily be distinguished from the others. Indeed, there is no chance for the innocent, unless some influential person steps forward to drag it out from the mass,

and represent the case to the proper authorities; and even then the chances are very much against the petitioning party obtaining justice. Does not this state of things call loudly for the institution of a court of appeal, to which the prisoner might have a right of applying for a rehearing of his case founded on affidavits, showing some just and reasonable cause for the same? Such a court, beside the satisfaction it would afford the public, that no innocent man could well suffer the penalties and opprobrium of guilt, would operate as a check to the courts below, and deprive the guilty of an excuse of declaring their innocence, to the no small annoyance of the sheriffs, and other authorities, in their visits to the prison, and to the great detriment and hindrance of justice to those who are really not guilty, most of whom are now lost, being included with the impostors and pretenders to innocence, the number of which is very great every session; and this makes the really innocent man's case so much more difficult, as the gentlemen who visit the prison, and interest themselves for individuals, so frequently find themselves imposed upon. In their desire to do all the good they can, they are occasioned so much unnecessary trouble by parties who, after all their labours, they find to be worthless: they at length give it up, and to justify themselves to their own feelings, persuade each other that no innocence is ever placed in the situation of guilt.\* If they had heard as many confessions as I have, of

\* So many cases of real or apparent error do occur, that the visiting aldermen, sheriffs, and gentlemen engaged more immediately in the management of the prison, are placed in a most painful situation, and it is sometimes very amusing to observe, how they all endeavour to persuade each other to take up cases of hardship, and to remove from their own shoulders the trouble and difficulty they know will be brought on themselves in any one case. It is not long since, I heard one alderman say to another, and a party of gentlemen who were with him, aloud, so as to be heard by all the prisoners in the yard where they at the time were standing; "There stands a young man (pointing to the prisoner) who has been three years in Newgate, and whom I know to be as innocent of the crime for which he is suffering as I am myself, yet I cannot succeed in obtaining his pardon. Keep up your spirits, young man!"

the part many of the prisoners have taken in affixing guilt on innocent persons before they were themselves found guilty, they would take a different view of the matter. The motives which have actuated men in these instances, and the means they have taken to accomplish their object, are often of a very ingenious and extraordinary nature, which form rare examples of the combination of talent and depravity. It is not, perhaps, generally known, that there are among rogues a set of designers in the art of committing crime, *i. e.* men who plan and contrive the various modes of robbery. Amongst these, he who can attach to his scheme a method of putting the robbed on a wrong scent is esteemed the best general; and I have known many cases wherein for this purpose they have sacrificed their old companions, after having disagreed and broken partnership. So sensible of this danger are they after parting acquaintance, that nothing gives them greater pleasure than to hear of their *ci-devant* friends being hanged or transported. Independently of all other chances by which an innocent person may possibly be placed in a situation of guilt, it not unfrequently happens that low attorneys, and sham ones, undertake the defence of a prisoner, and after obtaining all the money they can from them, abandon their cases altogether. I have known many instances of this kind, and of several individuals who have been under prosecution for the offence, and who have been convicted and punished. But I never knew of any case in which a prisoner so treated could obtain redress for himself, although, under these circumstances, he ought still to be considered innocent, as the rule *audi alteram partem* has not been adhered to. Who can say what effect a prisoner's defence might have had with the jury, and of which he was deprived by the commission of a greater felony, perhaps, than that for which he was called on to make his own?

Another practice these attorneys have. After taking all the money they can obtain from the prisoner by persuading

him his case is a good one, they then do nothing but attend when he is at the bar, or just before he goes up, when they make a communication to the prisoner, that "they have just left counsel, with whom they have had a long consultation, who advises, under all the circumstances, that nothing shall be said in court." Then, after recommending patience and quiescence, they leave the man to his fate.

As every man, by the humane spirit of our laws, is considered innocent until found guilty by a jury of his country, after having had a fair chance of defending himself, it is natural that each prisoner should be desirous of availing himself of this privilege; and it is the duty of the court to see that such regulations are established as will secure to the prisoner this advantage. However the feelings of the public in general may be prejudiced against all who appear at the bar of the Old Bailey, every one who advocates true and sound principles of justice and humanity, must feel anxious that this last favour should be secured to them. The attention of the aldermen on this point in their visits to the prison, show they have a just estimate of its importance. When any case of interest occurs, they, or the sheriffs, will order a supply of cash from some available fund to the accused, if the party have no means of procuring legal advice for his defence. These cases, however, are but rare, and no attention or assistance of theirs can bring any good to the body of prisoners, unless the system be altered. If the prisoners be considered, and I hold they ought, in any arrangement made for conducting the trials, not only that the innocent may have the fairest opportunity of making the same manifest, but that there should be no possible excuse left for the guilty to assert their innocence after conviction—a very material change must take place. Counsel must be restrained from taking briefs unless they can attend to them. Let a stranger go into Newgate a few days after the close of a session, and ask any of the prisoners what are their cases? I will undertake one half



will tell them they are innocent, and say they should have been acquitted if the counsel who had their briefs had not been in the other court at the time of their trials, and that they were in consequence left without a defence. Now, this is true with a very large portion of them every session; others are glad of this, or any other opportunity, on which to frame a declaration of innocence. Nothing can be more unfair than that counsel should be allowed to take briefs with fees, and neglect them. I have often sent to remonstrate on the subject; the answer always was, "I cannot help it, I can't divide myself; I was on a trial in the other court; if I had been gifted with ubiquity I should have been there." I have written twenty briefs on the first day of session for prisoners, and sent fees of one, two, or three guineas with each, which were taken, and have had twelve of the twenty neglected, because the counsel who had them was engaged the whole day on a trial in the other court, in which he probably had a fee of ten guineas or more. Only consider the ignorance of the prisoners in general, and the difficulty they often have to obtain the money for their defences, the bed being often sold from under their wives and children for that purpose, and the reliance they are obliged to place on the counsel in asking any material question to prove their innocence, from an inability to speak for themselves. After such a consideration, will any one say they are not entitled to protection against this practice of the counsel? In a court of civil law, the absence of counsel and brief would occasion the trial to be put off, or entitle the party, on motion, to a new trial. Many of the prisoners, too, are so stupid, that they take the judge for the counsel, and *vice versâ*, and would be put on their trials without even apprising the court, after having employed a counsel, that they were so prepared, did not Mr. Wontner make it generally a rule to ask the question as they are brought up, whether they have employed counsel? And be it understood, that these ignorant men are the very persons

who, being innocent, are most frequently placed in a situation of guilt. I have a long list of petty cases of committals to Newgate, with which the court has been troubled for the last three years, many of them truly ridiculous, and disgraceful to the magistrates who have been the cause of their going to the Old Bailey for trial. Take the first on the list as a sample:—A carter at Tottenham, who, most market-days, came to Smithfield with his master's hay, bought himself a new whip at a shop near Long Lane, which he, a few days afterwards lost, having an older one left at the stables in London in lieu of it. As he had marked his whip, and had had a new piece of brass put round it to strengthen it, he was constantly looking out amongst his fellow-carters for it, and at length discovered it in the hands of an acquaintance, who drove a team on the same road. He instantly demanded it, but his right to it was denied, and from time to time many altercations took place between them as they met at market or on the road. At length he saw it lying under the man's cart in Smithfield; thinking it a fair opportunity to recover his loss, he took it, and left his own in its place. The other man, judging who had it, came in the evening to a public-house in Tottenham, and claimed it; for several evenings this squabble regarding the whip was continued, to terminate which the man in possession of it proposed going to a magistrate in the neighbourhood the following evening, and submitting the matter to him for decision. They both did so voluntarily, being much heated with the many disputes regarding the ownership of the whip. The magistrate being unable to make anything of the dispute, asked the recent possessor of the whip, if he would swear it was his property? He said he would, and was immediately sworn. "Then," said the magistrate, "the other has committed a felony, and it is my duty to send him to Newgate for trial:" although the man offered the next day to produce the maker of the whip, from near Long Lane, to prove it was his. His mittimus was

forthwith made out, and the man being placed in a cart, was sent ten miles to prison, leaving a young wife and two infants distracted at home, whose appearance at Newgate the following morning, being that of a maniac, excited the sympathy of all about her. A more honest and affectionate pair of rustics I never saw. I was consulted regarding his defence, but so agitated and affected were both husband and wife, that in three days, during intervals, I could not make any thing of the story, for, whenever the man began to relate the particulars, his mind wandered so much that I began to fear for his intellects, and as the session was very near at hand there was no time to be lost. At last, I thought of the other man, of whom the magistrate had so speedily made a prosecutor, and sent a messenger to him. Whether the conduct of the magistrate had disgusted this man, or his feelings of irritation being now subsided had rendered his powers of vision more clear, I know not; but when the messenger reached him, he was beginning to doubt if the whip was his, or whether it was the property of the prisoner, whom the next day he visited in prison, obtaining admittance as his brother. He put me in possession of all the particulars of the case, and I made out a brief. In my first conversation with the prisoner and his wife, when asked what I thought of their case, I had said, that, "from the nature of the court, no man once committed was safe, although innocent, without great exertion to prove the same." In saying this I was justified, from what I have seen of the proceedings of this court, as well as from a desire of stimulating them to take such steps as might ensure the prisoner an acquittal. After I had seen the prosecutor, I was satisfied no bill could be found; I then gave them the brief, at their request, to amuse themselves with. Subsequently I learnt, after the bill was ignored, that this affectionate woman, as soon as she got the brief, went home and sold every article of furniture they possessed in the cottage, amounting to 3*l.* 5*s.*, which

she carried to a counsel, with the brief, in a strong feeling of resolution that her partner should not be lost for want of any sacrifice on her part. No one can defend the magistrate who committed this man; I have avoided the insertion of his name—the mention of the place, should he see this, will perhaps call it to his recollection. I conclude this case by saying, I never wished him any other punishment for his thoughtlessness than for a time to have witnessed the scene as I did. If he has common feelings of humanity it would have been chastisement enough. Every session our calendar of crimes is swelled with many cases similar to the one here related. This inconsiderateness of magistrates out of London produces much injustice, as the judges at the Old Bailey, when they obtain a conviction under cases of this nature, generally pass a sentence of transportation, having a notion that the prisoner must be a known bad character in the neighbourhood from whence he came, or the magistrate would not, for such a trifling offence, have committed him. Thus, as the offence is minimised the judge maximises the punishment, thinking he is doing the country a service in disposing of so desperate a character, without any evidence that the man was ever accused of crime before. I will add another recent case, which, although not in the list, now occurs to me. A man of heretofore good character, who kept a beer-shop at Teddington, was committed on a charge of stealing some potatoes last year. This case arose out of a dispute of ownership, and ought not to have been sent to the Old Bailey at all. For want of proper management at his trial, he was found guilty and sentenced to seven years' transportation. When this heavy sentence fell on him, his astonished neighbours began to make inquiry into the merits of the case, and soon satisfied themselves of the man's innocence. I wrote to a gentleman of consequence, and possessed of some influence in the neighbourhood, who, after convincing himself of the true merits of

the case,\* obtained a pardon for him. He is carrying on his business as before. That the judges act under a false impression in petty country cases, I have ascertained from an unerring source many times during my stay in that place. Often when I have been relating a case to the aldermen, one would say, "Is it not a shame to commit under such circumstances?" And another would reply, "No doubt the magistrate had his private reasons for so doing." With very few exceptions, the sentences in all the cases were transportation, which can only be accounted for by the before-named notion imbibed *a priori*, by the judges. Who that contrasts these cases with others wherein old offenders are let off with a few months imprisonment, will not say, "Something is rotten in the state of Denmark:" to place this beyond dispute, I will add two cases of an opposite nature. In July session, 1831, William Baxter, an old and known transport, was tried for not a light offence, and sentenced to three months' imprisonment in Newgate, where he was employed at his trade, (a carpenter,) at one shilling a day, and the usual allowance of food. Another young man, who had been four times in Newgate, and the last time for picking a pocket of a handkerchief, was, in September session, 1829, sentenced to three months' imprisonment in the House of Correction. Cases of this nature, on both sides of the question, as before said, might be cited *ad infinitum*. I will add one more, that of a child committed to Newgate, as illustrative of magisterial carelessness. A baker, residing at Ealing, missed his watch, and was unable in any way to account for the loss of it. Two or three days subsequently a little boy, only five and a half years old, was seen in the road with it in his hand, showing it to everyone he met, saying, "Look what I have got; I shall give it to my mother." An officer hearing of the circumstance took the child and watch before the magistrate, who questioned him regarding his possession of it. The little fellow told him he had just given another boy, whom he met on the common

while at play, three marbles and two apples for it. The officer was sent with the child to the common to seek the other boy, but he was not to be found, and the child did not know his name, for which he was committed to Newgate, to be placed at the bar of the Old Bailey. Nothing could be more ludicrous than the appearance of this child in court. There was the clerk reading over the indictment to this little urchin, whose chin did not reach the bar, concluding with, "Are you guilty, or not guilty?" the judge, essaying an air of extraordinary gravity upon the occasion, shaking his head most portentously at the little boy, because he would call out, "Not guilty, my lord."

There was the minister of the parish, who had come up to town on the occasion, besides his mother, and other friends, together with the governor, all engaged in persuading this little fellow to plead guilty. In vain did they promise his mother would take him home, and that he should have a tart, if he would pronounce the word "guilty," without the addition of "not." But "not guilty, my lord," was all they could get from him. The fact is, they were ashamed of the farce of trying such an infant, and had arranged for him to pronounce the word guilty, then to respite the judgment, and immediately send him home with his mother. But the boys with whom he had been during his stay in prison, had so drilled him in what he was to say when he came before the judge, telling him, if he said "guilty," he would be hanged, that no power could induce him to say otherwise. The acting this farce concluded by a jury pronouncing him not guilty, after all the gravest heads in the court had concerted a record of guilty. Magistrates generally are too hasty in committing prisoners on charges they must know cannot be substantiated on trial, and thus unnecessarily increase the business of the court, and enlarge our list of criminals. It is worthy of remark, that a fewer number of these cases come from the Mansion-House than from any other office, where a competent law-officer is always

in attendance to assist the presiding magistrate. Of this the judges at the Old Bailey seem not to be aware, as they always manifest a prejudice, not observable in other judges, against the prisoner, which, however they may feel, it is not politic or judicious to exhibit; and it has often been remarked to me, that, in every case wherein the greatest efforts have been made to defend a prisoner, by which they have been occasioned additional trouble, the sentences have been more severe. (It may be in a case of guilt, that when a strong defence is made, the full investigation of it may show the prisoner's turpitude in stronger colours, and thus produce this effect.) I say it has often been remarked to me, and is a common notion with many observing men, which lessens the respect in which the court ought to be held. It is easy to imagine that many years' sitting on that bench must have a tendency to make a judge believe all the world are rogues; but they should never forget the responsibility attached to their situations, and if the heart should become seared by habit, "assume a virtue if they have it not." That the court has lost its dignity, and public respect has been lessened for it within these few years, I have the opinion of some of the first city authorities for saying. Nothing but a court of appeal can operate as a check upon the carelessness of all now connected in the administration of our criminal laws. A court of this kind would have a sensible effect on all, from the judge on the bench to the common thief-taker. In London many wicked schemes are got up for sinister purposes against parties, by others more wicked than themselves, for the purpose of procuring convictions of felony. All know, in ninety-nine cases out of a hundred, if a man is once convicted, that the parties are secure from prosecution, however it may have been accomplished. Another argument in favour of the institution of a court of appeal is, that from the now hurried manner in which the trials are conducted, witnesses unused to appear in public, and of obtuse intellects, often make mistakes, which they

afterwards are anxious, if the opportunity were afforded, to correct, and which correction would put the prisoner's case in a new light. As cases perhaps illustrate these opinions better than many words, I will give one which occurred recently, though I beg to be understood that none of these opinions rest on fewer than a dozen cases, to support each head, and which have all occurred in my own experience. In September session last, a middle-aged man was indicted by his master for embezzling 2s. 3d., the value of some hay sold on his master's account. A few days before he was charged with this offence, he had left his master's service. He was discharged on a Saturday evening, after settling accounts for the week's takings, in accordance with their usual practice. There was no complaint against the man; his master wanted employ for him, and told him he would give him a good character. It happened that the master had the same day a cask of contraband spirits brought to his house, which was seized by the excise officers in the evening. This the master attributed to information given by the prisoner, and in temper caused him to be apprehended for the said embezzlement of 2s. 3d. The man's only defence was, that he had told him of it at the time of settlement, and desired him to deduct it, with the other sums received, from his wages; to prove which he called a man who was present at the time. The counsel for the prosecution so confused this man that he contradicted himself in a most extraordinary manner, until the judge committed him for prevarication. The prisoner was found guilty, and sentenced to six months in the House of Correction. Two days after his trial, a respectable person, who heard of the matter, came to the prison voluntarily, and offered to make oath that he was standing in the shop at the time, and heard the man say, "Master, did you take the 2s. 3d. for the hay sold to Mr. —?" The other man, when he recovered his self-possession, still said he would affirm the same on oath. This man had a large family, who



all went to the workhouse. If there had been an appeal court open to him, there can be but little doubt his sentence would have been reversed. In this case no one can be blamed; perhaps the prosecutor was minus the 2s. 3d., but the man did not intend to rob him of it. Numerous similar cases spring out of the movements in society, which cannot be imagined, and are only to be known by experience among the parties where they occur. It may be said, that all convicts would avail themselves of this privilege, and that the court of appeal would have as much to do as the Old Bailey court itself. Rules, however, might, without much difficulty, be laid down, to preclude all cases except those of probable error, and insure at the same time to the injured a fair chance of redress. A pardon from his most gracious majesty sets the prisoner free, it is true, but it does not restore to him his good name, or compensate him for losses occasioned by a false conviction. A court of appeal would do both, if the party deserved it. Those connected with the management of Newgate, if examined, will tell you all are guilty, and that they never meet with any who are convicted guiltless. This is with them the language of habit; they consider it their duty never to entertain the possibility of such cases occurring. "We," they say, "are bound to look on you as guilty, now a jury of your country hath so declared you." This is said to put the best face on the many cases they cannot help, in spite of all their prejudice, to look on as innocent ones. Besides, they are bound by their office to support the authorities under whom they hold their situations. Yet, notwithstanding, the gentlemen here alluded to are daily under the necessity of attending to cases which, from their very nature, demand their consideration and assistance. If they are sincere in their declaration, how is it that not a session passes without their interfering in several cases to obtain pardons? Is this done to make a display of consequence, or power, and to become important with these unfortunates?

There is a secret pleasure, no doubt, in the exercise of power, grateful to the feelings of all in office, but I am inclined, from the knowledge I have of these gentlemen, to give them credit for a higher and more noble motive in all cases wherein they interpose after conviction, viz. a laudable desire to save the innocent from an unmerited punishment. Of the necessity for an appeal court, there needs no better testimony than to have a return made of all the cases in which these gentlemen have used their good offices; no oral evidence could be half so applicable to the purpose—actions speak louder than words. Independently of cases in which individuals quite pure and untainted with crime do occasionally come under a sentence of the court, there are a much larger proportion of regular thieves convicted of crimes they did not commit. This I never looked upon as so great an evil, considering their characters were known to the court; and which being thrown into the scale, it is not to be wondered, that in any doubtful case the jury should find them guilty. To those unacquainted with these matters it may appear surprising that any should be found guilty, being innocent of the crimes with which they were charged. It has, however, happened in many cases. For instance, I have often been employed to defend a man under one, two, or more indictments, in one of which he was guilty and in another innocent. As might be expected, he would naturally direct my attention to the guilty case, saying he did not fear the other, feeling a security in his own innocence under that particular charge. Yet it not unfrequently occurred, in my experience, that the prisoner would be acquitted on the real case of guilt, and be found guilty on the other. Hence arises a common saying among them when, in their conversations in prison, one declares his innocence: “Then you are a sure condemned man; now, I am guilty, and make sure of being acquitted.” I had one remarkable instance of this. The father of a young man employed me to defend his son, charged with attempting to steal from a shop

in Bishopsgate Street a piece of silk, in which two others were implicated. They all three narrowly escaped apprehension at the time the robbery was attempted, and only got off by dropping the silk in the street, which was picked up by two of the shopmen who were close at their heels, attended by a police officer, to whom they were all three known : conscious of this, they did not go out for some time, for fear of being recognized. At length another companion of theirs got into the watch-house, being charged with stealing a bundle of silk handkerchiefs from a female in Shoreditch, when two of them ventured to go to him, for the purpose of giving him money for his defence ; when they were there, the policemen recognised them as the parties who had run off with the silk in Bishopsgate Street, and locked them up in the same place with the one who had stolen the handkerchiefs. These men are, in the greatest extremity, capable of astonishing acts of heroic generosity towards each other. On this occasion, the two men who stole the silk, conceiving themselves certain of transportation, became only anxious to save their friend, who was charged with a crime unconnected with their case. As one of them was about the same age and figure, it was proposed that they should exchange dresses, so as to deceive the prosecutrix, who was expected every hour to prefer her charge before the magistrate, and induce her to mistake the one for the other. This *ruse* succeeded ; for no sooner were they placed at the bar, than she swore to the one who had the other's clothes on, as being the thief who stole her handkerchiefs. He was in consequence committed on two indictments ; one for the silk and the other for the handkerchiefs, whilst the real culprit who had stolen the handkerchiefs was discharged. I could not persuade the father to take the proper means to prove his son's innocence on the latter charge, he saying, " It was impossible for a jury to find him guilty ; he (his son) being at the time the robbery was committed at home with the family, and other witnesses, at breakfast."

Both were, however, acquitted for the silk ; but my client was again put on his trial for the handkerchiefs, and found guilty ; receiving a sentence of transportation for seven years for an offence he certainly did not commit. I subsequently prepared five affidavits, tending to prove an *alibi*, which would have been laid before the secretary of state, but the lord mayor, and several other magistrates, refused to allow them to be sworn, as being extra-judicial. By the way, I have known many very distressing cases of injury to parties arise, and many flagrant instances of perjury go unknown and unpunished, out of this difficulty thus thrown in the way of ignorant and poor persons, to whom every facility ought to be afforded of proving their statement ; particularly as any petition laid before the secretary of state is disregarded *in toto*, unless well supported by affidavits. I would not be understood to throw any blame on the court, in the instance wherein the habitual rogue comes under the judgment of the court, when not guilty of the particular charge for which he receives sentence ; as it rests generally with the police officers, who will go very great lengths, in giving their evidence, to accomplish a conviction, when they have a known character before the court ; though it cannot be excused for the very censurable manner in which the trials are conducted, and the great want of discrimination shown throughout their proceedings. 1st. The shameful manner in which the trials are hurried over, which often favours the escape of the most desperate characters. I remember making a brief for a young man guilty of a heavy offence, which he acknowledged. By the irregularity so frequently observable in bringing prisoners up to their trials, this culprit was, three days after being called up to the court, waiting to be put on his defence, during which time he was called into court six times, for the purpose of being present when fresh juries were empannelled ; and each time, he told me, on his return into the prison, that he saw his prosecutor in the gallery of the court ; a proof there was no wish

on his part to neglect his duty in appearing against the prisoners yet, when at length he was called to the bar, no prosecutor appeared, his patience having, in all probability, been exhausted by the length of time he had been so unwarrantably detained from his business. This occasioned the discharge of the offender, who went again into the world to commit crime, and, by rehearsing this tale to his associates, add another feather to the wings of their hopes of plundering the public with impunity. 2dly. The many obstacles the friends of the prisoners have to encounter in making a defence for them, which is occasioned by the uncertainty when they will be put on their trials, making them unwilling to trouble their witnesses, who must attend for eight or nine successive days, for fear of losing the benefit of their evidence altogether;\* to which may be added the difficulty of getting witnesses into court when the trials are called on. I know one case of this kind, which can, if necessary, be attested on oath, as I have seen the parties within these few weeks, who are willing to make affidavits of the facts, and submit themselves to any examination, although the affair occurred three years since. They attended with the father of a young man who was at the time on his trial for a robbery, to prove an *alibi*, but were refused admittance by the door-keeper, although he was told their business, and that the young man on whose behalf they came was then on his trial. The particulars of this fact are known to several of the aldermen, who have, in my hearing, condemned the conduct of the man attending the door in no measured terms; still no steps are taken to remedy this evil.

\* Since writing the above, measures have been adopted for the better regulation of presentments before the grand jury, by which much time and trouble will be spared, both to the prosecutors and witnesses in their attendance to procure bills; but the business at the Old Bailey, it seems, is for the present to remain in the same state of confusion. Subsequently, these supposed improvements have been tried, and found to be as defective as the old practice. *Vide* Prison Discipline, *post*, for some further observations on this head.

In consequence of the absence of these witnesses the prisoner was found guilty, and sentenced to death. The story was told to two of the aldermen, who subsequently made a very minute inquiry into the case, and took the affidavits necessary to prove the prisoner's innocence. They ultimately expressed their unqualified opinion that he was condemned unjustly; but were unable to procure a pardon for him, although they made repeated applications to Sir Robert Peel for that purpose. I will state the reason of his refusing to comply with the request of these gentlemen, so urgently made, as expressed to one of the aldermen, who told me of it. No circumstance can better show how ignorance places the innocent in a situation of the guilty. "All you say gentlemen," said Sir Robert Peel, "you may believe; but I have a petition from the prisoner, wherein he acknowledges his guilt. I must, therefore, decline interfering in the case; he, however, shall not suffer the severest penalty of the law." If Sir Robert Peel had known there are a set of men in Newgate, who, because they can write, think themselves qualified to draw up petitions—and that they do this all of one pattern, in which they never fail to insert that it is the petitioner's *first offence*, he would not have been so obdurate. One of these, containing this sentence, was presented at the secretary's office by the young man's father, signed indeed by his son, but which was never read to him; he being at the time in a state of bodily and mental debility which rendered him quite unconscious of any effect the wording of the petition was calculated to produce, even if it had been read to him.

Through the influence of the aldermen, the young man was, after his respite, detained in Newgate, in the hope of something at a future time being done for his liberation. Within these three months the prosecutor has signed a declaration, to which I am a subscribing witness, that the prisoner is not the man who robbed his house; and that he has subsequently discovered the man who did break into the premises.

This, with the affidavits of the three persons who were shut out of court, are now before the secretary, and there is every prospect of a pardon soon restoring him to liberty. The opinion of one of the aldermen, who was on the bench at the time, regarding this trial, ought generally to be known; it was expressed to me not many weeks since. I must, however, for the present suppress the particulars for certain reasons: suffice it to say, that although a capital case, it was not tried by one of the judges of the superior courts. This case has been warmly taken up and laid before the secretary of state, by the present sheriffs.

Much of the present confusion in respect to the uncertainty the prisoners are kept in when they may expect to be called for trial, would be obviated by the clerk of the arraigns putting the names down on the list in the order they are found by the grand jury, or by his adopting any fixed plan most convenient to himself. Up to the present time, all this part of the business has been done without system or order. The intense anxiety the prisoners feel to prepare themselves and friends for the expected hour, throws them into a great state of perturbation throughout the session, being fully sensible their witnesses cannot afford to be in attendance for eight or nine days together; yet in no case can they form any opinion when they will be called for trial. On the day preceding the commencement of the session, the governor of the prison, or some person for him, goes round to the different yards, and apprises them that the session will commence on the morrow, and warns them against being unprepared. This rather adds to their anxiety. All are in expectation of being called, and off they send letters to summon their friends, who, after waiting for several days, go away in despair of being able to serve them. A man from Enfield, ten miles from town, whom I defended, was found guilty, and heavily sentenced, for an offence which, it is my firm belief, he did not commit; it being a vindictive and malicious prosecution,

which would have been satisfactorily laid before the court, had he been tried on any one of the first five days of the session, or could I have ascertained at any time within a few days when he would be called up. He had four witnesses waiting for the five days to rebut the evidence of the prosecutor, on whose unsupported testimony he was convicted; but their poverty, not their wills, drove them home, leaving the prisoner exposed to the statement of a vindictive, interested, and ignorant prosecutor, who was paid every day for his attendance. A man, named Price, who was tried for stealing forty pounds of butter last September session, I defended. He was called up six successive days, and was the last prisoner but one or two who was tried. When he was sentenced to six months in the house of correction, Sergeant Arabin told him, but for the testimony of one gentleman, who gave him a good character, he had intended to transport him. This gentleman had ridden from the country, a distance of fifteen miles, that morning, for the purpose of giving his testimony, after having been, with three others, in attendance every day throughout the week. He came into court just at the crisis the prisoner was about to be removed from the bar. We have here the judge's own declaration, that this witness produced a difference in the prisoner's sentence of six years and six months, supposing he was only to have been transported for seven years. What, then, might have been the effect if all the witnesses in his favour had been heard, and of which he was deprived by the want of system in this court? Even this witness would have been absent but for having a horse to convey him, as all the other witnesses were prevented reaching the court, by the coaches from the place where they resided being previously engaged; on so slender a thread do they allow, by their want of management, the fate of men to hang. It is needless to illustrate this defect by other cases: these will serve to show that, when the name is on the list placed at the door of the court, and the prisoner is called, there is no



certainty of his trial coming on in due course. I have known witnesses kept in waiting for days, in a case which stood next in order for trial on the list at the close of a day's business, whilst other names, both below and above, were called and disposed of. And I have known prisoners go in during the session at eleven o'clock one evening, and be called for trial at nine the next morning, there being at the time more than half the prisoners in the place untried, many of whom had been committed weeks before, and consequently ought to be better prepared to enter on their defence.

A case of this nature happened in 1829, when a very gentlemanly man was accused of attending at the courts of law, and other public places of resort, for the purpose of exchanging old hats and umbrellas for new ones. He was, however, acquitted. His apprehension, magisterial examination, committal, trial, and discharge, did not occupy a space of time more than sixteen hours, although a night intervened, and this occurred, not on the last day of the session, but in the middle of it, when there could be no excuse for proceeding so irregularly.

According to a regulation in the prison, it is expected every night during the session that the names down on the list for trial next day should be called out in the several yards. This is not notice enough, as the prisoner may, by the time the prison doors are opened for the admission of his friends the following morning, be placed at the bar for trial. This duty is, however, so ill done, that it would be better discontinued, as it rather perplexes all parties than otherwise. The practice is to send a man round to the several yards about eleven o'clock at night, when all are in bed, and most of the prisoners asleep, to call out the names of those wanted for trial the next day. The reason this is not done at an earlier hour is, that the clerk of the arraigns waits until the business of the day at the court is concluded before he makes out a list for the following day. This calling out of

the names, on the face of it, appears to be a very proper regulation, and fair towards the prisoner; but it is a delusion. The inutility of it may be easily conceived, when it is stated, that the man, oftentimes as late as twelve o'clock at night, hastily calls over a string of names, such as Smith, Jones, Thomson, &c. Every session there are probably twenty of the same name, as those who adopt one for the prison, generally select a common one, for obvious reasons. One session I made briefs for six John Joneses, and in the prison there were at that time fifteen whose christian and surnames were the same. What makes the matter still worse is, that this duty is performed by a prisoner who is employed as a wardsman. This person will often suppress a name, that the man may be taken by surprise, and called unprepared for his trial. He will do this to revenge himself for some pique he has against a prisoner; such as not submitting to certain impositions this person, in his capacity as wardsman, exacts. Or the prisoner may have thought it prudent to employ another to write his brief for him; an offence this important personage never can forgive, and which he never fails to visit with every species of annoyance, among which, though the last he can exercise, not the least in its effect on the devoted prisoner, is that of making him stand his trial at a short notice. From this cause, and a total want of system in arranging the prisoners during the session, the prison is in a complete state of confusion the whole time, occasioned by calling up prisoners whose names were not previously called, or down on the list; sending others back who have been called by mistake; that "He is the wrong Jones," &c. All this is unfair towards the prisoner, as the court, knowing nothing of the causes which may leave them without a friend to assist them in their defences, cannot make any allowances, or give them credit, for characters which are not before the court. Nothing can be more easy than to remove these just causes of complaint. It only requires the serious attention of those who have the power to remedy these

things. There should be an intelligent and active officer appointed to be in the interior of the prison, whose duty it should be to make himself acquainted with every prisoner's name and person, as also the offence with which he is charged. This person, during session, should be wholly employed in arranging the prisoners for trial, in conformity to a regular system, which should be laid down by the court, and which in no instance should be departed from. He should be held responsible that each prisoner was brought up in order, and had due notice of the same. It is now left to the turnkeys, under the direction of the before-named prisoner, who are in nowise competent to the duty, and who, indeed, have quite enough to do in attending at their respective stations, and securing the passes of communication throughout the prison. A responsible man so employed would really be a great boon to the prisoners as well as to the turnkeys, who now think of nothing but getting the prisoner up, and placing him at the bar, whether he has had notice or otherwise. All their anxiety is to exculpate themselves from neglect. In several instances, when the witnesses have been sent away, and the prisoner been suddenly called up, I have written a note, praying for time, addressed to the judge, for the prisoner to hand up in court; but the turnkeys who accompanied them always contrived to get possession of it, and prevent its being delivered. Under the present system complaint is useless, as these men manage to throw the blame from their own shoulders, by supporting each other through all lapses of duty. This is natural enough; the fault is not with them, who, as turnkeys, are generally very fit men, but in the system, or rather the want of it. I remember an instance of a man who was detained two days after his acquittal at the bar, and which was after the grand jury had broken up. This man was twice placed at the bar in the course of two days, and an indictment read over to him each time, charging him with stealing a one thousand pound bill, and he was detained until at length they discovered it was

another man in the prison of the same name. Errors of this nature are very common, which could not well occur if an officer such as I have named were appointed. That it should not be better ordered is surprising, as there is no want of disposition shown in other matters to accommodate every one in any way consistent with the painful duty they have to perform. But the general want of arrangement mars every good intention. Promises are daily made, which never can be performed; cases are commiserated, which gives injured individuals a hope they may yet have justice, but which are deferred until the heart is made sick with disappointment. The reverend ordinary is conspicuously active, and ever shows a disposition to do his duty to the uttermost. He may be seen every day going over the prison, anxious to advise, assist, and hear the complaints of the prisoners; admonishing some, soothing the distress of others, and in every way furthering the ends of justice and the well-regulation of the prison. But the precarious services of individuals, without an alteration of system, can effect but little, however we may be disposed to laud their exertions.

The want of an officer to take cognizance of the prisoners, as before named, during session, is much felt. If such an one were appointed, he might very usefully be employed, in the intervals between the sessions, in receiving the prisoners as they are brought to the prison, and assigning them wards, and classifying them in the best way the construction of the place will admit of. A receiving ward is also much needed, where the prisoners should be examined previously to their being placed in other wards, and, if necessary, put into a proper state of cleanliness before they are allowed to join the other prisoners. They now undergo no scrutiny, and much inconvenience results from it. The prisoners are constrained to make a complaint to the turnkeys when they have a man in a dirty state: after the lapse of days perhaps he may be removed into the infirmary to be rendered clean, an operation

which would be more advantageously and usefully performed when he first came into their hands. Another serious inconvenience is felt in the internal arrangement of the prison, for want of a proper place for prisoners who are acquitted on the ground of insanity. Sometimes there are half a dozen persons confined who are confirmed lunatics, and who have been acquitted of crime on those grounds. These the governor has no means of disposing of but by placing them in the several wards among the other prisoners, who are awaiting their trials. The consequence is, these wretched men's failings are made the sport of all the other prisoners; their minds are kept in a constant state of irritation; every sort of trick to tantalize them is played off, for the amusement of the most brutal and ignorant of beings. This occasions their being removed from ward to ward, which keeps up a constant confusion in the prison, until their exacerbation forces the necessity of their being removed to Bedlam. The only place the governor of the prison could put them in, away from the other prisoners, is the infirmary; and this, as an asylum, is the least fitted of all for them, there being no separate ward from the sick in which they can be secured and provided for: consequently, they must live and sleep in the same wards where there are patients in the first and last stages of fever, and where there can be no control over them. One of these men, who was removed about nine months since to a proper house of reception, after having been in Newgate twelve months, occasioned much trouble. When he first came in, the men in his ward were obliged to fasten him with cords to the wall, where he raved for several successive days and nights, until he was exhausted; after this nothing appeased his restlessness but being allowed to sharpen razors,—an amusement not very agreeable to those who were constrained to sleep beside him, as he would get up in the night and pursue his labours. When I heard of his case, I took much trouble to divert his mind, and at length persuaded him he

had a talent for painting. I supplied him with colour, brushes, and paper, with which he was much delighted; and ever after, all annoyance ceased, unless irritated by one subject, of which the prisoners did not fail too often to avail themselves, for what they called amusement. He was an old soldier, and had served in the Peninsular war, where he had received many wounds. He had a notion that his heart had been taken out, and another dying soldier's on the field of battle placed in his thorax in lieu of it. On this point he would never bear contradiction, saying, the Duke of Wellington was present at the operation, and could prove it. It is evident if this man had been in proper hands much agony of feeling might have been spared him. Last year another of these unhappy objects destroyed himself in the prison during the night, who had been confined there for several years. In laying the result of my observations before the public, I have no private feelings to gratify, no injury I wish to revenge on any one connected with the place; on the contrary, I have many obligations to acknowledge, and shall ever be ready, at all times and in all places, to offer my testimony of the good intentions possessed by all parties engaged in the management of that establishment. It is the system which is defective; and as few accustomed to close observation have had the opportunity of seeing so much of the working of the machinery of the court as myself, in conjunction with the effects produced on the prisoners themselves, I could not refrain from using my efforts to point out the errors of it. No subject can be of more importance or interest to the public. If I had not felt a firm persuasion in my mind, that an amended plan would not only lessen the instances of injustice, now of so common occurrence, but in the end produce a very considerable diminution of crime in London and Middlesex, I should not have obtruded any remarks on a subject the least of all gratifying for a man to write on. And I wish it to be understood, in any further observations I may have to make, that I

am actuated solely by a wish to be of service to the public. My impression is, that the legislature may go on enacting and amending our criminal code for ever, without any good resulting to the public, until they ensure the steady and unerring administration of the law. The court, as at present constructed, evidently will not allow itself time for a patient investigation of cases brought before it. Even the common turnkeys are sensible of this fact. After an unusually long trial, they may all be heard to say, "We shall have them knocked off for this pretty sharply to morrow." And, moreover, it is most lamentably deficient of means for obtaining the best information regarding known public depredators.

## SECTION II.

### *Necessity of an Appeal Court.*

BEFORE I proceed with any further general remarks on the Old Bailey Court and Newgate, I shall make some observations in support of the arguments already advanced, of the necessity there is for the institution of a Court of Appeal.

A court of this kind should be invested with powers to enforce the attendance of witnesses in a summary manner; and, if necessary, means should be furnished to bring the evidence before the court, and supply the agents employed with funds, which may be needful for seeking the truth of any statement an appellant might make, having the appearance of probability and truth. For want of such a power and means, it is incredible what a number of apparently very hard cases pass uninvestigated, which on the face of them bear all the appearance of innocent persons undergoing the punishment of the guilty. If a collection of these cases were made

at any period, for twelve months together only, they would fill a volume which would much surprise the public, proving "that truth is stranger than fiction." Many have come under my own observation, and of which I have taken notes. No flights of imagination could possibly equal some of these cases of real life,—many of them similar to the one I am now about to relate,—as further illustrative of the need of an appeal power from our criminal courts in London and Middlesex, if not extended farther. Whether the parties in this case were really guilty, or otherwise, is not for me to say; I can only declare I believed them innocent. But let the tale speak for itself.

Two British sailors were taken on the high seas, in a Spanish slave-ship, which was carried into a West Indian port and condemned. They were brought to England, and tried at the Old Bailey Admiralty session, found guilty, and sentenced to death. After going through the usual ordeal of confinement in the cells of Newgate for several months, they were respited, and ordered for transportation for life. As they told a story which, if it had been proved on their trial, would have acquitted them, they excited some commiseration, and were, through Mr. Wontner's representation to the under-secretary, retained in Newgate for a considerable time, in a hope the men would be enabled to establish their statement, and obtain a pardon. Indeed, the sheriff's and Mr. Wontner had so far succeeded as to have the promise, that when they themselves were satisfied of the truth of the statement the men should be liberated: and they were told so. They (the sailors) stated, that on a certain day, a few months before they were taken, they entered into the service of a merchant at Liverpool, on board a certain vessel, bound to a certain port, and commanded by a captain whose name they gave, as also the agent at Liverpool who engaged them for the voyage; that, on the coast of Africa, the vessel they went out in was wrecked, and all lost save themselves and the cap-



tain ; that, in consequence of this catastrophe, they were left in a most desolate situation, when one day they saw the ship in which they were captured running along the coast : they hailed her, and were taken on board, on condition of assisting in navigating the vessel to America ; that about a week afterwards they were captured, and that they did not know until they were on board of the nature of the trade the ship was engaged in ; and, consequently, they ought to be considered in the vessel against their wills, being so situated by the force of circumstances over which they had no control.

One thing appeared against them on their trial : it was given in evidence, that when the ship was captured they professed to be subjects of America, and not born in England. This, no doubt, was the cause of their being found guilty, and serves to show, that the straightforward path of truth is always the best, under any circumstances. These men, seeing themselves in a dilemma, thought of escaping by disowning their country, which told hard against them at the time, and was the cause of all their subsequent sufferings. It however does not alter the real facts of the case. I wrote to the merchants in Liverpool, who replied to my letter, and acknowledged that two sailors, bearing the names of these men, went on a voyage in a ship of theirs, which was lost on the coast of Africa, at the time and in the manner stated in my letter ; but they had no knowledge of their persons, and consequently could be of no use to the parties in the way which was needed, namely, identification. And they concluded by referring me to the captain, who had reached home, and was then employed in navigating a steam-vessel between Liverpool and the Isle of Man. To this gentleman I dictated a letter for one of the men to write, who after some time gave them a reply, acknowledging the occurrence of all the circumstances, saying he hoped soon to be in town, when he would come to identify them.

Months passed away, when, in a letter I got from the

agents at Liverpool, a suggestion was made, that if ten pounds were sent, in all probability the captain would come up on purpose. Mr. Wontner most considerately named this to the sheriffs, who promised to advance the sum. I dictated several letters afterwards for these men to the sheriffs, on the faith of this promise; but whether the pressure of other business diverted their attention, or on reflection they thought themselves not prudently justified in risking the money, without some security that the captain should fulfil his engagement, I know not, but the matter was lost sight of; and suddenly one day—as is usual when men are removed from Newgate, on a few hours' notice—these men were sent to the hulks. I have not since heard whether the captain has taken any steps to serve them. This case is cited for the further purpose of showing how remote is the chance for the prisoner to prove a particular fact, when the entire onus is thrown on himself, whilst in confinement. These men were tried and condemned upwards of two hundred miles from the place where any one who knew them resided, being without a penny in their pockets to influence any person to use the smallest exertion in their behalf. Ignorant themselves of all matter and forms of law, what could be expected from them in the way of defence? Had they been sentenced to transportation for life, it is more than probable no persons would have interested themselves regarding them, and no step would have been taken to prove even as much of their statement as is here set forth; but as they were under sentence of death, and, in consequence, placed in the cells, they immediately became objects of interest, and had every opportunity afforded them of seeing and conversing with all the gentlemen who are usually active in such matters, and their story became known.

When reflecting on the influences under which men act, as viewed in connexion with Newgate, nothing is so inexplicable to me as the extraordinary anxiety shown by the gentlemen

above alluded to, in every case of condemnation, to ascertain the real guilt or innocence of each individual under sentence of death, and the readiness evinced in every instance to give a patient hearing, and to take on themselves the trouble of after-inquiry. Yet, no sooner does the respite come down, then all interest ceases; investigation ends in every instance, even should some of the cases have the day before amounted to a moral certainty of the parties' innocence, and which, if inquiry had been followed up, would have satisfied them of the same, and have been brought to a legal proof. But now, the man is *only to be transported for life*, no one will take the trouble even to listen to any thing he may have to say, much less inquire into the merits of his case, or commiserate his sufferings. Surely, it would be more charitable never to interfere, and not hold out hopes of assistance they mean to disappoint. Besides, in a case of innocence, the punishment of death would be a mercy compared with transportation for life, as the one would end his sufferings, but the other perpetuates them. To live among convicts, and to bear the punishment and opprobrium of one unmeritedly, and this for life, must assuredly be considered the acme of human misery, rendering death far preferable to such endurance.

Mrs. Fry appeared to take strong interest in the fate of these men. One of them said to me, when I expressed a hope, after his having had a conversation with that lady, that she would be of some service to him, "The lady, sir, gives us both good advice; but we want *justice*, and nothing but *justice*. I understand her: she, in the goodness of her heart, endeavours to soothe our condition; but *we* stand on our innocence: it is for the *guilty* to listen to lessons of penitence." I explained to him that it was not in her power to relieve him from the heavy sentence he was under, or in that of any other person. *And this it is of which I complain*, and which has induced me to relate the case. If I thought others were needed, and would have any effect in the establishment of a

power to redress those wrongs when they occur, I could cite them.

The only objection I have ever heard to the institution of such a court, is, that it is not needed, as the city authorities are sufficiently patient in hearing cases of this nature, and equally active in obtaining pardons when necessary. Let us for a moment suppose they are competent to this duty, and that all cases of innocence do come under their cognizance, and that they never fail in obtaining pardons, is it no injury to have been condemned by one authority in *error*, and, when the same is known, for that *error* not to be acknowledged publicly, and the world disabused by such public acknowledgment, by an authority at least equal to that under which the condemnation occurred, and thereby disarmed of any cause of reproach towards the party? The amplest compensation should be made. For the feelings in these cases no satisfaction can be offered. It would be some gratification to the wounded honour of a man, when his sentence was reversed, if it were gazetted, and the fullest publicity given to all the merits of his case. *Pardon* does nothing: the word implies forgiveness, and indirectly confirms the sentence of the court, only forgiving the punishment annexed to it. But it is not true that any exertion of the city authorities is efficient: look at the case cited in page 80, where two aldermen satisfied themselves of a young man's innocence. One of them was on the trial. and does not even now scruple to condemn the conduct of the judge who tried him; and yet they have not been able to obtain what is called a pardon, for an innocent man, although they went in person, and urged the matter with great zeal and perseverance, having in their hands affidavits, taken by themselves, to prove the facts on which the application was founded, and still came back *re infecta*. Nothing can be more creditable to these gentlemen than their conduct on this occasion: one of them, to the present hour, says he will never desert the young man. But few cases are taken

up with so much warmth ; and the statement of it shows the uncertainty of the power when exercised as one for redress. The fact, however, is, that the sheriffs generally leave cases of this nature entirely for Mr. Wontner to bring under their notice, having an idea that they are more liable to be deceived than that gentleman. This is a duty that ought not to be imposed upon him ; he has other important and heavy duties to perform ; besides which, there are serious objections against any governor exercising functions of this nature. First, no man can fill his situation, even for a few years, without imbibing unconquerable prejudices. I am willing to acknowledge the gentleman now filling that office is as free from prejudice as any one can be, similarly situated. Still, every manager of a gaol will unavoidably have strong prejudices, which make them lose sight of the spirit of our laws. They believe every man brought into their custody guilty : as far as a matter of safe keeping goes, it is well they should entertain this opinion ; but I will not concede that they are endowed with qualifications to discriminate in questions of guilt and innocence—and that both before and after trial ; thus, in the latter instance, becoming a succedaneum for a court of appeal, which would have duties of a higher nature to perform, were it once established. Besides, in every case wherein they interpose, they are placed in the invidious position of either opposing the magistrate who committed, or the judge who tried, the prisoner. And the dependent and subservient nature of their office restrains them from using their judgment with freedom—examples of which might readily be adduced. Secondly, notwithstanding the sheriffs (particularly when they first enter their office) look to the governor for information in all matters relative to the prison, yet he is embarrassed by so many conflicting interests and considerations of jealousies ever observable in the city corporate body, that he can scarcely in any act ever give satisfaction to one authority without offending others,—so extremely tenacious are they all lest any one

should aspire to, or usurp what they consider their prerogative and privilege of office. This is conspicuously apparent among them in every discussion relative to the prison. They seldom or never can be brought cordially to take the same view of any case, and support each other: even in that of life and death, a thousand opposite opinions will be broached, and much bickering transpire.\* Thirdly, the governor is, in all cases of interest in which the prisoner is in any way supposed to be injured, liable to come into immediate contact with the prosecutor, and have his mind warped by interested and false statements; especially in instances where the prosecuting party has a strong personal interest in not setting the prisoner at liberty;—cases which often occur in the city. Again, in other instances, there is danger when recommendation lies in his hands, from the ready access to his ear, of unworthy cases being favoured by a super-exaltation of character, and recommendation arising out of the most benevolent feelings, but which renders the effect partial, and produces injustice; not to mention the bare possibility of a venal perversion of the power. I cannot but offer an apology to Mr. Wontner for the latter allusion. He has, I believe, filled the office for nine years. All who know that gentleman will join me in offering testimony that it is impossible for any person to exceed him in diligence, judgment, or humanity, in all which appertains to the painful and responsible duties of the situation. Far be it from me to let one word escape which can be construed into a reflection on one so eminently calculated for the office. I must, however, claim for myself fair liberty to use every argument in support of what I have propounded—namely, the absolute necessity there is for an Appeal Court. Had I not, as said before, after what I have seen, thought it a public duty, I should not have imposed this task on myself for many considerations. Fourthly, there is always some danger in investing the governor of Newgate with the power of recommending cases for the royal mercy, lest it should in

his hands become a kind of patronage. In proportion as this is most felt by him, is he restrained from exercising usefully this privilege for the benefit of those who deserve it; and I am firmly persuaded that Mr. Wontner's conduct is often influenced, in his desire to press on the notice of the secretary any particular case, by a fear which exists in his mind that he (the secretary, or those who perform the duty for him) will think he is too officious, and too freely using a privilege allowed him only for their convenience in prominent instances of claims for pardon; so that, if more *bonâ fide* cases requiring the interposition of the pardon power should occur, in one session, than is on the average usual, it is probable the governor would be deterred from advocating them at all, at least with equal zeal, although his judgment might dictate the justice of treating them all with the same sincerity. I am as equally convinced that he is, from the same considerations, led to seek his opportunities of introducing the cases either to the aldermen, sheriffs, or under-secretary, (with the latter gentlemen he comes immediately into contact,) on these subjects; and thus many chances are lost for doing a duty to which his heart prompts him, but of which his judgment denies him the exercise—not a judgment that informs him the case does not deserve his patronage, but a judgment which tells him if he is not very wary in using his influence it may be lost altogether, and that it is better to serve a few of the unfortunates, than, by an injudicious exercise of his privilege, to be deprived of the power of serving any. He is, in consequence, generally accused of tergiversation, the appearance of which is perhaps unavoidable in his situation. It is remarkable, that the greatest number of cases pardoned, and of those in which the cases of innocence have been made the most clear, have always occurred in the shrievalty of gentlemen characterised for their extraordinary activity and perseverance. I have no doubt but the instances in Newgate are tolerably uniform, but the want of equal industry in the sheriffs, or their more press-

ing private concerns, prevents the same number each year being brought to light. Sheriff Wilde did more in this way than any other before or since his shrievalty. He saved the lives of two men after they were ordered for execution, viz. James Anderson and George Morris. Through the talent and extraordinary zeal of this gentleman, these men's innocence was made perfectly clear, *even after they were ordered for execution*. Had they been condemned in the shrievalty of gentlemen more passively disposed than Mr. Wilde, they would have suffered; after which, any one who might hold an opinion they were innocent would have been laughed at, particularly in the vicinity of the Recorder's seat at the Old Bailey. Every man who takes on himself the task of showing that cases of innocence do come under condemnation at the Old Bailey, I am aware, subjects himself to the sneers of many persons in the city. I have no wish to exaggerate any thing which came under my observation in Newgate; on the contrary, I have great difficulty in writing the result of my experience, and in relating real facts in a manner calculated to obtain the credence of the inexperienced, which I am obliged to do by relating cases not overcharged with extraordinary events, and which are within my proof when challenged to give them; not but others of a more romantic nature have occurred, and are in my note-book, reserved for another occasion. All I have in view at present is the establishment of a Court of Appeal, which I hold should be instituted, were it on no other grounds than these—viz. that a large portion of the prisoners brought into Newgate are remarkable for their stolidity and obstinacy, (not professed rogues,) who, even when innocent of the charge brought against them, appear as it were petrified and astounded, in which manner they are often taken to trial, without making any effort (more than declaring their innocence) to acquit themselves of the felony. I have often thought that this, with very stolid prisoners, was the effect of conscious inno-



cence. After their trials they begin to tell their story, which is often of such a nature, that if, in many cases, it had been known to any intelligent person before they were tried, they could have readily been instructed how to show their innocence in court. I shall presently speak of a measure which, in my view of the subject, will be very useful in these cases of ignorance. Mr. Wakefield (page 132) says, "But what shall be said of the system which, in seven cases out of sixty-two, would have destroyed life improperly, but for the voluntary interference of humane and skilful men?" But these seven are like the prizes in a lottery: the blanks are never heard of. Mr. Wakefield treats only of death, when speaking of the number of cases of innocence discovered. I am anxious, and shall endeavour to show that it is not only in capital cases persons are condemned who are innocent; others do occur, and that very frequently, which are of equal interest, according to my notions of justice; though some persons appear to think, that if a man is not to be put to a violent death, it is of no consequence enslaving him for life, guilty or otherwise.

A case occurred, upwards of three years since, of great hardship, in which all connected with the administration of the laws in the city and in the prison were, there is every reason to believe, convinced of the reality; but the circumstances were of so delicate a nature, the bench itself being immediately involved in the affair, that all, whilst they appeared to commiserate, were tenacious of interfering. The prisoner and a large family, in consequence, fell a sacrifice to the peculiarity of his situation. He had nominally been clerk to an attorney in the neighbourhood of Chancery Lane, into whose service he had entered under the following circumstances: having a connexion of his own which would have brought him professional practice, but was unable to avail himself of it, not being a certificated attorney, he entered into an engagement with a gentleman who was in the profession,

under a written agreement, wherein it was stipulated that he (the prisoner) should bring his connexion to the office of the attorney, and that the profits accruing from the same should be divided equally between them. After a time, a misunderstanding took place between the parties relative to their pecuniary affairs. The prisoner, conceiving he was in danger of losing his fair proportion of the profits of the business done, went to his own immediate friends who had brought employment to the office, and collected all the money he could, amounting to about sixty or seventy pounds, when he went back to the office and demanded a settlement, stating what money he had received, and from whom, saying, "I wish to come to an amicable adjustment, but I will not give up the money of which I have possessed myself until you consent to balance the account, in conformity with the tenor of our agreement." After some further high words, they parted; and in a short time afterwards, the attorney caused him to be apprehended, and preferred a charge of embezzlement against him, for the several sums of money received by him. When the parties came before Sir Peter Laurie (it was a city case) the prisoner produced the written agreement of partnership, and urged his justification on that ground. This occasioned several remands. At length, Sir Peter Laurie said he felt the question to be one of great difficulty: the agreement between the parties being an illegal instrument, a certificated attorney could not legally enter into partnership with an uncertificated man; still, he thought the existence of such an agreement between the parties would destroy the felony, but it was for a jury to decide the question; and the prisoner was committed to Newgate for trial. In the interval between the committal and the commencement of the session, much negotiation took place between the prisoner's friends and the prosecutor, who now felt that he had incurred a penalty of the law in having entered into such an agreement with an uncertificated partner. The prisoner prepared for his trial in full

confidence of an acquittal, on the exhibition of his agreement. Just, however, as he was about to be called up, his friends came to him and said they had made an arrangement with the prosecutor, to which they wished he would accede. They pointed out the uncertainty of law; that probably the court would not admit an illegal instrument to be given in evidence, although he felt himself justified in what he had done;\* adding, that it was agreed, if he would plead guilty to the indictment, and thus prevent the further exposure of the transactions between them, the prosecutor's counsel and his own had had an understanding with the judge that only a nominal sentence should be passed of a few days' imprisonment. Thus urged, and further induced by the tears of his wife and the distress of a young family, he consented, if he could have an assurance from his counsel that such an arrangement had been made. His own and the prosecutor's counsel both gave him this assurance, saying the affair had been intimated to the judge, and that it was so understood. On the faith of this he pleaded guilty. When the day of sentence came, he went up, expecting nothing but that his judgment would be respited; but, to his dismay, he heard himself sentenced to fourteen years' transportation, the fullest penalty of the law, under Sir Thomas Plomer's act, for persons convicted of "embezzlement." It was now evident that he had either been entrapped into the plea of guilty, or that some serious mistake had occurred. Inquiry was made through every accessible

\* I know a case in which Mr. Harmer was attorney for the prosecution, and in which the prosecutor was so situated with the prisoner, that he (the prosecutor) was himself in dread of an indictment for a conspiracy, and also another for perjury, if the prisoner should obtain his liberty; and relented having commenced the prosecution. In his perturbation of mind, and doubts whether to proceed, or withdraw and conciliate the prisoner, in case of discharge, he gave a written paper, worded in the strongest manner, declarative of the prisoner's innocence of the offence with which he was charged. Yet the judge held this instrument could not be admitted as evidence. This extraordinary and interesting case, with all the circumstances connected with it, will shortly be laid before the public.

channel. The counsel for the prisoner wrote a letter, which I saw, and which is still extant, confirming the arrangement, and expressing a readiness to call either on the judge or the secretary to serve the prisoner. The judge himself was applied to, who said, "he thought he had some slight recollection of the matter, but had made no note of it;" and recommended an application to the secretary of state, who would, no doubt, under the circumstances, grant relief. Numerous communications took place during upwards of one year, in which I took a part, in behalf of the prisoner; in which time one of his children died, and the whole family fell into the utmost poverty. The only explanation which was ever given was, that the judge who presided when the prisoner pleaded guilty wrote the plea against his name in the book which is on the judge's desk in court, without any note, and on the instant left the bench, which was immediately occupied by another judge, who, casting his eye on the last name in the book, saw a blank in the sentence against a plea of guilty to the crime of embezzlement, and filled it up, without inquiry, by inserting fourteen years transportation. It is remarkable, that almost all the gentlemen who usually examine cases of this kind entered into the particulars of this, yet nothing effectually was done. Affidavits were drawn up, to which the agreement of partnership was annexed, and other documents, including a copy of counsel's letter regarding the original understanding, which were laid before the secretary; and the prisoner was, from time to time, led to believe he would obtain his liberty. Ultimately, however, he was sent to Van Diemen's Land, where he now is, in an attorney's office at Hobart Town. About sixteen months since, his family was sent out to him. Every facility has been given him for a comfortable settlement under the sentence, most likely in consideration of the circumstances connected with his case. No one is impugned in this affair, though some carelessness was shown; and if the interlocutory conversation did take place between the counsel,

judge, &c., does it not confirm my previous statement respecting the affairs of the Old Bailey court being muddled by the interference of others? There cannot be a greater truism: it wants no confirmation—the thing is too generally known, and it never will be otherwise until the business of the session is out of the hands of the city corporation.

Had a Court of Appeal been open to this man, can any one doubt but the question of his guilt or innocence would have been settled? But the truth is, if such a court had been open, the case never would have occurred. An Appeal Court would hang, as it were, *in terrorem* over the other, and the business at the Old Bailey would be better performed. Many considerations prevented the man having a pardon. The object here, as in all similar cases, was to keep the public mind quiet on the subject. “If we let him out,” they say, “his first act will be to institute proceedings against the attorney on the illegality of the agreement, and give publicity to the case. In fact, whilst he was in Newgate, I prepared a statement for publication, accompanied with affidavits to prove the truth of the particulars in all their bearings. He was desirous to have it published; but, as I thought it might offend those who at the time were interesting themselves in his behalf, I persuaded him to forego his intentions. Other feelings are suppressed by the usual reasoning, “It will be better now for him to go abroad, as he has lost his character by being in Newgate, and will be unable to do any good in this country;” although a gentleman had come forward and offered to take him into his employ at two guineas per week; and this he did in compliance with a suggestion made by one of the aldermen, who thought it would facilitate the man’s enlargement.

It would be superfluous to use further arguments, or adduce other cases, in proof of the necessity there is for an Appeal Court. It may be said, a writ of error can now be brought. The practicability of this proceeding is admitted;

but it is a very expensive procedure, and out of the reach of most men in common life; besides, if not brought within a very limited period after the trial, the parties lose their claim to it, unless the attorney-general will give his consent. The fees for his acquiescence are arbitrary, and may, if he exacts them, amount to a hundred pounds or more; consequently, the instances of persons availing themselves of this appeal are rare; and I believe there is but one case on record in which a sentence of death was reversed by a writ of error being brought. The party was discharged on a point of law, by the Court of King's Bench, after the judges in a criminal court had decided against the appellant. It related to a robbery committed upon some shipping in the river. And, if I understand this privilege of "writ of error" rightly, it is only to be claimed when a point of law is to be settled, and consequently will be of no use to a prisoner who can prove his innocence only on general grounds. Referring, again, to the difficulties the accused labour under of proving their cases, no part of the subject is of more importance than the difficulty they have to compel their witnesses to attend at the trial. It will be asked, why have they not a subpoena at their command? Yes, they have; but if the party whose attendance be required is supposed to be friendly towards the prisoner, and can give evidence serviceable to his defence, it is the practice of all attorneys to recommend that no subpoena shall be served, lest it should offend him, and prevent his attending; and they substitute solicitation and entreaty. If, on the contrary, the party is adverse to the prisoner, but the evidence he could give favourable, they know that in ninety-nine cases out of a hundred it is never regarded. I ask, does any one know, under the latter circumstances, of a person ever summoned respecting the instrument called a subpoena to attend at the Old Bailey? The reason why they are disregarded is very manifest: every man receiving a subpoena consults either his own interest, inclinations, or convenience,

placing the consequence of non-attendance against the inducements he may have for staying away. Reasoning thus, he soon comes to the conclusion that he will not attend; because, if the man should be convicted, he will not be in a situation to take any steps for enforcing the penalty; and if acquitted, it is clear his evidence was not required; and consequently, as he could be of no use, no penalty was incurred. Where shall we seek for an instance wherein any person in a criminal case was ever punished by fine or imprisonment for non-compliance to a summons issued from the clerks of the peace office in London or Middlesex, when issued at the instance of the accused? I never heard of one, and may add, never knew many obeyed when there was any motive to stay away. I knew one instance wherein a witness for the prosecution absconded just as a trial came on, after having waited several days, and who thought (having been there so long) it an excuse to leave; being unwilling to give evidence against a young man, his intimate friend, on a charge of embezzlement. In this case, the witness was sentenced to several months' imprisonment, as his absence favoured the acquittal of the prisoner. This instance, however, is not one of contempt of summons, as he had been bound over, before a magistrate, in recognizances to appear. It is evident that none of the difficulties attending a defence are applicable to the habitual delinquent, who fairly can have none to make; but if I had the power to re-organize the system, I would provide as much against the possibility of any injustice being done the prisoner, (depriving him even of the shadow of a complaint,) as I would against giving the slightest chance for the escape of an offender who merited punishment; knowing, as I do, that on both sides of the question the nearer we approximate to perfection, the more the one will assist in accomplishing the other object—namely, the conviction of incorrigible thieves, and the discharge of the innocent; of which latter there are really more instances than the world

are aware of. When, however, the multifarious transactions of men in this metropolis are considered, and that the modes of getting money are so multivious, and that the spirit of the times is to sail as near the wind as possible—in other words, to get money in any way, so as to avoid the penalties of the law—it is no wonder that often, when men disagree and are foiled in their grasping views of aggrandisement, they should, under their disappointment, take any steps, however unjust, to revenge themselves on those who have caused their illicit speculations to fail. There are instances at the Old Bailey court, of daily occurrence, wherein the prosecutors and prisoners have for years been in the habit of transacting business together, and whose consciences jointly never restrained them from obtaining money in any way, however dishonest; but when they fall out, if one has not, through habits of careless confidence, so well prepared himself for the rupture, and the other can see an opportunity to take advantage, it is seldom passed over; and as the dealings between them have been ever loose, occasions are rarely wanting for one to become a prosecutor, and turn honest man by sending his old acquaintance to the antipodes; and oftentimes this is done for no other purpose than to appropriate to themselves property which they see, under a conviction, within their grasp. In most of these cases, the prosecutor's moral and legal guilt, taken in the aggregate, exceeds the prisoner's. I have taken down some extraordinary cases of this kind, with a view of tracing the operations of the mind under various circumstances and in different grades of society; but, as they are not applicable to my present purpose, I will not trouble the reader with them. At another time, and in another form, I may attempt to amuse the world with these anecdotes. My only object in naming them at all, is to illustrate the motives that witnesses have in a number of instances, for disregarding the service of a subpoena, as the business is now conducted. In the cases where all the parties are tainted



and none connected with them are influenced by principle, the prisoner is sure to come off the worst. The prosecutor, having his liberty, finds various means of bringing in and keeping out of court just so much evidence as suits his own purpose. With these characters a subpoena from the prisoner is laughed at. I have many times turned this inconvenience over in my mind, and felt indignant at the contempt shown to the court, and have thought of the means to remedy the evil, not for these men only, but for the general good and the better respect of the court. I will not waste time in attempting to show the utter inutility of the penalty of money, as inserted in the instrument, and the words "At your peril, fail not." A prisoner convicted *cannot* bring an action, and one that is acquitted *will not*. The court should, in every case, take the responsibility of enforcing its own orders: whether for or against the prosecution, they should punish every contempt. They do so when they are inconvenienced by the non-attendance of summoned jurors, and why should they not visit witnesses with penalties, when it is fair to presume, in every case of dereliction, the parties have a sinister motive for so doing? In many cases, it is a kind of passive perjury. To remedy this, I propose there shall be an office in, or attached to, the prison, from whence the subpoena shall be issued, where the prisoner may have as many as he shall need, on payment for the same. Men should be appointed to serve them, similar to the Insolvent Debtor's Court services of notice to creditors; of course, receiving a remuneration for the service, at the lowest possible rate of charge. I calculate eighteen-pence for the service would be sufficient, when the number is taken into account, and how many would be served in one day, by taking the town in districts, as bankers' clerks now do in presenting bills of exchange. Let us suppose this to have been accomplished; then have the messengers in attendance during the session, with their books alphabetically arranged, in which would be

entered the names of the prosecutors and prisoners, together with all the witnesses summoned on each trial. When a case came on, if any one were absent, there would be the messenger to prove the service, or account to the court if he had been unable serve the process on the party.

The court should further be empowered to levy, *instantly*, such fine or punishment as might be deemed efficient to deter parties from treating its summons with contempt. If the messenger, on oath, should acquaint the court that any person was "running up and down," as it is termed in law, to avoid the service of a subpœna, then the judge should issue his warrant for apprehension, as is done in the superior courts, when affidavits of the fact, in civil cases of law, are laid before them. They should never depart from this rule, taking the entire responsibility of enforcing the attendance of witnesses on itself. I cannot imagine a more deadly blow to the hopes of all rogues than the adoption of this measure: the certainty of the witnesses being compelled to attend against them, will remove one of the main props on which they stand, in calculating their chances of escape after being committed; and, on the other hand, would insure to all others a fair prospect of having their cases properly laid before the court. The officers who would be employed to serve the subpœna, might be made very useful during session in collecting witnesses together for the trials next on the list, in apartments which might be appropriated for the purpose. This would enable the court to proceed with regularity, and avoid all the bustle now so annoying to itself and the public; particularly the custom of bawling out the names of witnesses at the door of the court, who, in most cases, are sitting drunk at the neighbouring public-houses, whilst the prisoner is standing in awful suspense at the bar. The number of inebriate persons, or those in some measure excited with liquor, put into the witness-boxes at the Old Bailey courts every session, is very great, and, if possible, should be prevented. Almost all cases

of prevarication committals arise out of the parties' intoxication. The larger portion of the witnesses every session are drawn from the working classes of society, who are never from their work but they will drink. Conceive several hundreds of these men waiting for eight and nine days together, in a confined neighbourhood, where every third house is one of entertainment. Mr. Wakefield says, persons before honest have been so highly excited at witnessing an execution as to become thieves on the spot.\* In accounting for the manner in which men are drawn into crime, I am surprised he passed over this scene, acted on the same spot, where, for a whole week together, men are in a state of excitement from drink, who are associating and conversing with persons on the subject of crime and the tricks of swindlers, talking over the extraordinary good fortune of some and the ingenuity of others, and in every way becoming familiarised with loose notions and bad principles. Here, indeed, he might have found out a fruitful source of crime. Every week so spent in idleness and debauchery corrupts, on a moderate calculation, or destroys the principles of, fifty persons,† who, if proper arrangements were made, might have immediately deposed to the facts they knew, and have forthwith gone home to their avocations. No language can be too strong when used for the purpose of denouncing the system which leads to the present confusion regarding the trials at the Old Bailey. It disgraces the city authorities especially, as it can be so easily remedied.

To the plan I have proposed for subpoenaing witnesses, and the arrangement of them at the court, there can be no objection on the score of expense. The office may be made a source of great emolument, which, perhaps, may operate as an

\* E. G. Wakefield, Esq. on the Punishment of Death, p. 181.

† Many boys and young men have told me, their first ideas of crimes were generated and imbibed by mixing in the company of those who loiter about the Old Bailey during the sessions; and that they have come, in some instances, as witnesses, and gone away thieves in intention.

inducement to the citizens not to oppose so salutary an arrangement. The cost of a subpœna, which is now obtained from the clerk of the peace, is but a mere trifle. If, therefore, they charge 5*s.* for the service, the expense will not be more than 7*s.* each, at the utmost, which will be a great saving both to the prosecutor and the prisoner, who, in all cases when it is done by an attorney, on the most moderate calculation, must pay 1*l.* 1*s.* for it, with the charges of "instructions, service, letters, messengers," &c. &c. This charge of 5*s.* would enable the managers of the office for subpœna to employ a competent person to go round the prison from time to time, between the sessions, to hear all the prisoners had to say; and if he thought any, from their story, really worthy of consideration, to give them his advice and the subpœna gratis, if needed, that they might have a proper chance of proving their innocence on their trials: and in every case assisting all in preparing for their defence, by patiently hearing their own account of themselves, and afterwards advising them to the best of his judgment. An immense advantage would accrue from the adoption of this plan. So far from increasing the business of the place, as may be supposed by some, it would at once remove a moiety of the burden now encumbering the present system. It is for the gaol-committee to remedy many of the evils here pointed out; they have the power in their hands to interfere in all the internal arrangements of the prison. It only needs that they should consider well the working and effects of their management for these last twenty years, and reflect on what has, and what might have, been done in the way of improvement.

## SECTION III.

*Information respecting the Character of Prisoners.*

THERE can be no doubt but the judges, and their coadjutors, the aldermen, &c., are anxious to secure a known thief. They have, however, not hitherto hit upon the method to find him out. On the trial it is usual for the judge to ask the police officer who gives his evidence against the prisoner, whether he has any knowledge of him. The officers in this service generally hitherto have been in it so short a time, and exchange it so frequently for other employments, that they acquire little knowledge of the body of London depredators. After the officers, the governor of the prison is referred to, either in court (which is often done by signs) or in private, when the judges determine on the sentences. His information is gathered from several sources: 1st. His own recollections of their persons; 2dly. His books of description; 3dly. The powers of recognition possessed by the turnkeys; and, lastly, The information obtained from prisoners who are retained in Newgate as wardsmen, whose special business it is to report all they know or can collect regarding every prisoner coming into their respective wards. All these sources are very defective. The governor's own experience can avail but little, except in very recent cases of recommitments, when the recollection of any other person in the place would equally answer the purpose. The books aid very little, as no man goes into Newgate twice with the same name, trade, or place of nativity. With regard to the turnkeys, it is left entirely to chance whether they choose to give information or not, unless called upon in some particular cases of doubt and disputation to give

an opinion as to the identification of a prisoner. This is, at all times, however, a bad source of information, for obvious reasons—their powers of reminiscence being very unequal. But the information obtained from the wardsmen, and which is the most depended on, is the least certain of all, and is much abused. It is natural for these men to make their report exactly in accordance with the money, or other presents, they can obtain from the prisoners. There is one of these men who boasts of making forty pounds each session by writing briefs. He is most consulted on the subject of the prisoners' characters. That he does write briefs is true, but his employment is chiefly obtained by threats, saying he can influence the governor for or against them, and that they cannot expect he should make a favourable report unless they engage him for their defence.

Out of this arise great abuses, and, in real truth, it is fraught with much mischief and wickedness. Without referring to any individual so employed in particular, I have no hesitation in denouncing this part of the system, and of declaring that great injustice is done to many men through this source. Money with such characters does every thing: he who pays is an honest and a good fellow; he who has not money, or will not be imposed on, is an old offender, and a scoundrel, &c. &c. All reports and tales carried into the office through such media are poisoned, and from an impure channel: they should never be heeded by any sensible and experienced man. Those who listen to them are laughed at in secret. It is useless to find fault with any plan without proposing a better. The difficulty of recognizing old offenders in Newgate, makes the authorities consent to use these men as auxiliaries in their views for that purpose. The only method would be to employ acute men as agents, who would soon acquire experience. Their time should be wholly employed in visiting prisons in London and Middlesex; making themselves acquainted with the prisoners, by repeated views

of their persons in the several wards where they are placed ; occasionally conversing with them, by inquiring who they are, from whence they came, and how they had been employed in life ; and many other questions, such as experience would suggest : sometimes accusing them of being old offenders, and of personating other characters than their own. By these means, regularly pursued, they would at least become acquainted with the persons of all who went into prison twice. When they ascertained a former conviction, it should be their business to bring into court a certificate of the same, and be sworn at the time as to the identity of the prisoner, and the same if the prisoner had been before put on his trial and discharged ; in every case giving the prisoner seven days' notice before trial of their intention to prove a former conviction or convictions, and imprisonments ; so that the prisoner might have a fair opportunity of disproving the statement, if the officer should fall into an error. This would put the court in a proper position to act with decision and certainty, and relieve the keepers of the prison from an irksome duty. The channels through which information respecting the character of the prisoners reaches the ears of the judge should be stopped up, and all done in open court. The prison reports, whether favourable or unfavourable to the prisoner, pass through so many hands, and are influenced by so many circumstances, that, before they reach the judge, no reliance can be placed on them, except in very flagrant cases, when the culprit is known to all, and no private report is wanted. I grant that in some instances, by these means, men who would otherwise escape with a slight punishment are brought under the eye of the judge ; but the same information would be equally useful, and *more satisfactory*, were it given in open court, after the manner I have above proposed. The proceedings and sentences in each case would then stand fair before the public, and open to discussion as to the cause and effect in every case of severe or slight punishment. In recognizing

thieves, the governors of other prisons are sometimes called in; their opinion is not given in open court, and ought not to be relied on. Similitude of personality, with some carelessness on their parts, often lead to serious mistakes: they are gentlemen not easily persuaded on these points to give up their opinion when in error.

To prove that the information is not faithfully conveyed to the judge, it is only necessary to read the two following cases, which occurred nearly at the same time, and are not of a twelvemonth's date.

A man was committed for robbing, or attempting to rob, a cart, in the street, (what is called "dragging,") who had been twice under sentence of death, (once in the country, and once at the Old Bailey,) and who had not many months before been discharged from Newgate, where he had been confined for six years. He pleaded guilty, and was sentenced to seven years' transportation. If his character and former convictions had been known to the court (and which ought to have been known) he would have been sent out of the country for life. If the plan of employing officers for the sole purpose of recognizing bad characters, and who ought to be held responsible to the court for every known former conviction, had been brought into practical experiment, this man would not so easily have escaped, after having spent six years in Newgate. Reasons, I know, will be given why this was kept from the court: these reasons, however, will not stand the test of inquiry. Sir Robert Peel thought he did much towards repressing crime when he brought in a measure to increase the punishment on second and third convictions. God help him! he knew but little of the character of men he was legislating on, or the system under which his law was to be rendered effective.

The other case is that of a young man who, before his trial, had given the wardsman some umbrage, and, in consequence, was reported to have been transported once before, although



he was not twenty years of age. Owing to this report, he was transported for fourteen years. As the nature of his crime, which was a minor offence, and good character given in court, led the father of the prisoner (a most respectable tradesman, in a principal town of Sussex) to expect a much less sentence, he was greatly surprised, and naturally inquired the cause of his son's having this heavy punishment. There was no hesitation in telling him. When it was made known to me, I advised the father to begin with the life of his son, from seven years of age, and to bring affidavits to track the young man's course up to the day of his apprehension. This he did, and they were laid before the secretary without effect. These two cases need no comment.

## CHAPTER IV.

PRINCIPAL SECRETARY OF STATE'S OFFICE, OR DIFFICULTY  
OF ESTABLISHING CASES OF INNOCENCE BEFORE THOSE  
IN WHOSE HANDS THE POWER OF PARDONING IS VESTED.

## SECTION I.

*The Pardon Power.*

IF a court of appeal were open, to which all injured parties might apply for redress, there would be but little occasion for the exercise of this branch of the royal prerogative, which, at best, is but a very uncertain and insufficient mode of obtaining relief. Indeed, it is impossible to conceive any thing much worse than the *modus operandi* of the office in which this power is wielded; and there is too much reason to suspect that great abuse has crept into this department. Were, however, the members in this office endowed with infallibility, its very construction is opposed to a right decision, and of a nature to render it inapplicable to the end proposed, viz. a reversion of erroneous convictions. For the better understanding of any strictures which may be made on this subject, I will describe the office. It is a branch of the "Home Secretary's Office," in Downing Street, Westminster, and is usually denominated "Mr. Capper's Office," that gentleman being the superintendent of the convicts, and at the head of the depart-

ment which orders the removal of them, after conviction, from the different prisons throughout the kingdom, and the shifting them from hulk to hulk, as occasion may require; also, the drafting and sending them on board the transport ships, to be conveyed to the colonies. This office is a depository of the books, in which a register of all these transactions is kept. Here petitions addressed to his majesty, or the principal secretary of state for the home department, must be delivered, if the matter regard convicts or prisoners under a sentence of a court of law. Personal application, also, may be made here on behalf of any prisoner, confined in London or the country; but beyond this boundary none can pass, unless persons of some consequence, and having an introduction, when an interview may be obtained with Mr. Phillipps, the under secretary, who stands immediately as a barrier between Mr. Capper and the chief secretary. Access may be had to Mr. Capper, every day when he is in town, at this office, from ten to four, and every information obtained relating to convicts—particularly the course to be adopted in any views one may have in assisting a prisoner, whether it is for staying him in this country, or urging his speedy embarkation for the colonies. Full one moiety of the petitions sent into this office relate merely to these points. Mr. Phillipps is a barrister; and it is his peculiar duty to read the petitions, and report to the principal secretary thereon. A man needs not multocular powers to penetrate far enough into this *sanctum sanctorum*, to see that the principal secretary knows nothing at all of nine hundred and ninety-nine cases out of a thousand of the petitions presented, or of the decisions connected with them. Mr. Phillipps, in a few solitary cases possessing extraordinary features of interest, may name them to the principal secretary; otherwise, unless some titled man, or ministerial member of parliament, take the petition in his pocket, there is no possible chance for the chief secretary ever hearing any thing of the matter contained in a

petition; and the party must, in this case, solicit an interview with the secretary, without naming his object until he is introduced—thus giving the office the go-by altogether. Having accomplished this, if it be a striking and real case of injury, the secretary will probably give the necessary orders for relieving the prisoner; or if it be not a very flagrant case of enormity, and the soliciting party have interest with the secretary, and ask it as a personal favour, a pardon is generally granted. I have a letter from an honourable, the brother of an earl, now in my possession, who had been solicited to do an act of justice, by laying before the secretary a case of gross injury under a sentence, in which he (the honourable) says, “I commiserate the situation of the prisoner, and regret that I cannot be of any use to him, as I have no interest with the present administration.” This request was made at the time the Reform question was before the House of Commons, and the family of the honourable were vehemently opposing the measure. The reply shows the impression on the writer’s mind was, that under the present pardon power, not merits, but interest only, could avail the applicant; and he concluded by saying, “That perhaps an application from him might injure the prisoner’s cause.” This was good discretion and sound judgment on his part; but is it not monstrous to see so great a want of that virtue called justice in this renowned land, where nothing is more boasted of than her love of this virtue?

That this opinion of the pardon power is not peculiar to the honourable (who, by the by, had excellent opportunities of forming a correct judgment in these matters) I know well, it being the impression of all persons in any way connected with the working of the present system. Although seven out of ten cases of pardons and commutations of punishment are obtained per favour, *sub rosa*, yet we cannot, in the present state of things, view the secretary’s office in any other light than that of a court of appeal for all cases of injustice, it

being the only quarter through which any relief can now be obtained, however palpable and acute the case of suffering may be. As a proof that it is so considered by the authorities, it is a *sine quâ non* with the under secretary that he shall be a barrister-at-law. But the incompetence of the secretary of state, or any of his officers, to summon witnesses, and take evidence on oath, or to examine minutely into the facts of each particular case coming before them, renders it absolutely impossible for them to arrive even at an approximation to any thing like an accurate notion of the merits of any one case. Besides which, the office is at times crammed with such a multitudinous number of petitions, that no one man can go through them; especially as the majority of them are so very similarly mendacious, that were he placed under a guard, and on pain of punishment constrained to go through them for twelve months together, a revulsion of stomach must take place. No man could undergo it: he must give it up, maugre all consequences, however gifted with longanimity. It cannot, therefore, be expected that a gentleman of education and intellect will impose on himself so wearisome a duty, when there is no one to call him to account, or to accuse him of neglect. My opinion is, none are read by the under secretary, if we except a few marked by Mr. Capper, who, being in the habit of visiting Newgate, and conferring with Mr. Wontner, becomes acquainted with a few cases of striking interest, which have been noticed by some of the city gentlemen, and thus forced on his attention; or he may read, if marked for him, some few petitions from prisoners in country custody, when they are presented *respectfully*, and by persons deemed worthy of attention, and whom they may feel unwilling to disoblige. Some notion may be formed of the vast importance of the duties of the secretary's office, now so slovenly done, when it is stated that, in the last two years, no fewer than 172,159 persons, including those committed on summary convictions, but exclusive of debtors, have passed

through the different gaols in England and Wales. If one in a hundred petitioned, (almost all in London and Middlesex do petition,) only conceive, when the omnigenous matter is considered, what an operose work it would be for one person to read them all, with the documents attached, together with the trials, which must be done in order to form any tolerable opinion of the cases. All this is, however, inservient where it done. The court of appeal wanted is one which should be open to every person, without reference to interest, patronage, or favour. When such a court is established, I repeat, many cases of peculiar hardship in real life will be developed, which have hitherto been withheld from the public for want of a second opportunity to make an exposure of facts, which, in several cases within my own knowledge, would excite much interest and astonishment if they could be made known. To justice every man is entitled, let his manners be what they may; and for obtaining which there should be no condition that his claim must be urged with gentlemanly address, and with respect towards those whose business it is to help him to it. I have known cases taken up by benevolent persons, and laid before the present appeal power (the secretary's office,) who, after great trouble and much waste of time, have been constrained in disgust to give them up, from the contumelious treatment they have received in endeavouring to do what they considered a duty. The gentlemen to whom I allude are spoken of as possessing great urbanity and suavity of manners, and I am ready to bear testimony as to their personal capabilities of so conducting themselves in their offices, and in their general intercourse with mankind; but, like other men, they have their aberrations. There are occasions of assumption of great *hauteur*, and of their treating respectable parties with ineffable contempt. No man, whatever may be his case of injury, has now the slightest chance of being fairly heard, without having a friend, possessed not only of humanity and perseverance, but of powerful influence, if redress is

sought through the secretary's office in the form of a petition, however palpable and clear his case may be. The difficulty is to get a reconsideration of it. In many cases I have written four and five petitions, each time referring to the former; and when at length, through the perseverance, and perhaps a little violence, of an individual, some kind of answer was obtained, it was found they had never heard of the case, and all the papers were lost. This is sometimes a serious matter to the petitioner, as the same affidavits are not always again to be obtained. I drew up one not long since of a most important nature to a prisoner, which was attached to his petition, and sent into the office. After making a second and a third application, it was discovered the document was mislaid or lost. On referring back to the party who made it, I was informed he was dead, and the prisoner left without hope of ever again being able to establish his case. The gentlemen by whom the business of this office is conducted, and those with whom they hold communication at the prisons on these subjects, all appear to entertain a notion they are in every case conferring a favour on the applicant, by condescending to bear with tolerable patience the hearing of any matter he or his friends may have to urge in support of the prayer of a petition. Did they, however, conduct themselves otherwise, it would not remove the radical evil. All is wrong in the present system. The guilty should be deprived of the power to annoy any person after conviction, and of even the hope of pardon from any one but his God; and he should further be taught to feel there was no hope in this world for his offence but by expiation; at the same time impressing on his mind, that a sincere repentance, and real reformation, would not only improve his condition here on earth, but would ensure him a pardon of far more importance than any in the power of man to grant, and on which his happiness hereafter depended. The innocent, on the contrary, should have no favours to ask. If, by any reasonable statement, they could show there was a

probability of their proving their innocence, and that they had been condemned erroneously, then a re-hearing of their case should be a right, and an opportunity afforded as speedily as possible for them to appear before a competent tribunal; and if found to have been condemned in error, they should be restored to society with a character untainted by the conviction. It is an absurdity and a monstrosity to talk of favour and humanity in the latter cases. No one, however, can now approach these pets of office without a long-drawn and fulsome compliment on their far-famed benevolence and extraordinary humanity. Faugh! I will not blink the question. They always shuffle off from every case they can, and take credit for humanity in those which have been forced on them by the nature of circumstances, and the moral courage and perseverance of particular individuals. Men in office will always be more or less lauded by their immediate friends, were it only to entitle themselves to a similar *coup d'ami*. A man once convicted, however unjustly, is generally abandoned by all his former acquaintances—

“ Let the stricken deer go weep,  
The hart ungalled play,”

—and soon learns, that those he before accounted sincere were but pseudo-friends. In this situation, if innocent, he may be likened to a shipwrecked mariner on a barren rock, without a hand being held out to assist him. What can a man so situated do, under the present system, towards obtaining justice through the means of the secretary? and where there naturally enough exists so strong a prejudice against him, and with a power so incompetent to the end proposed, and where justice, I regret to add, is very rarely administered with strict impartiality, and whose acts are wholly under the influence of patronage? This opinion of the power is general. Apply to any of the gentlemen connected with the Old Bailey, and inquire what steps they would recommend to be adopted for the



liberation of a prisoner, supposed to be innocent? Have you any interest with the principal secretary of state? will be the first question put to the inquirer. Secondly, any man of title, or any member of parliament, possessed of ministerial influence, that you can call in to your aid? So impressed are the gentlemen belonging to Newgate with this notion, that if the inquiring party reply in the negative, he will at once be told, there is no hope of obtaining either a pardon or commutation; and if a particular individual is mentioned as likely to assist, they will sometimes add, "Don't employ him, he is not liked at head-quarters."

Colloquies of this nature are of every-day occurrence, and at once prove what are the opinions of those who are in the most favourable situation to form an accurate judgment on the subject. If a court of appeal should be instituted, it is of importance that there should be no limited time after trial for making the application for a re-hearing; as it often happens, that years pass away before the proofs of innocence are brought to light. Last year, two men were brought up from the hulks to Newgate, and discharged, with a woman, who had been detained in the prison; all under sentence of transportation. Not having the calendar before me, I cannot say precisely how long they had been convicted; but, I believe, upwards of two years. They had all three been found guilty of stealing from the person of a man in Westminster a sovereign, and they were convicted solely on the prosecutor's evidence. This man was afterwards prosecuted and found guilty of perjury, for evidence he had given on another trial—no doubt for the purpose of obtaining money. This circumstance coming to the ears of the convicts' friends, they made inquiry regarding the man in the neighbourhood where he had resided, and, most fortunately, met with a person who informed them, that about an hour before he (the prosecutor) had sworn to having been robbed of the sovereign by the two men and the woman, he had applied to him for the loan of a

shilling, saying he had no money. Affidavit being made of this fact, coupled with the conviction for perjury, obtained them their liberty, after much exertion, and two years' servitude on board the hulks.

In another instance, a man, who had been employed by an architect to watch a large building, which was being pulled down, and to see that none of the materials were stolen by the men engaged in the work, caused one of the mechanics to be taken up for stealing some lead, value a few pence. The prisoner was convicted, and sentenced to seven years' transportation, solely on the evidence of this one man. About two years and a half subsequently, the witness himself came into Newgate, and received a sentence of fourteen years' transportation. Previously to his going to the hulks, I examined him touching the affair of the lead, and he confessed, in the most unequivocal manner, that he had put the lead into the man's dinner bundle, consisting of some bread and meat, tied up in a handkerchief, himself, as he owed him a grudge; and at the same time thought it would enhance the value of his services with his employer, he never having had an opportunity of detecting any pilferers, which made him think his master would turn him away. He was a secret agent in this employment. The mechanic was liberated after three years and a half of servitude; not, however, without the intervention of a gentleman of powerful influence, and who was several times on the point of abandoning the case, in consequence of the trouble it occasioned him.

I cannot allow this last statement to pass, without calling the reader's attention to the sentence of seven years' transportation for a few pence; and that for a first offence, supposing the man to have been guilty: the court, indeed, was bound to consider him so, on the evidence. The building from whence the lead was supposed to have been stolen belonged to the Commissioners of the Woods and Forests; consequently, the commissioners and the king were prosecutors.

Now, it is a remarkable fact, and the sessions papers of the Old Bailey will bear me out in the statement, that in every case wherein only one penny is abstracted from a public body—and, in most cases, from rich individuals—no regard to the character of the prisoners, or to the circumstances of the case, avails them: transportation follows to a certainty. There is no greater crime in the eyes of the judges at the Old Bailey than being poor. The thief that robs a poor man of his all, is virtuous compared with the man who takes sixpence from the rich; and should the rich prosecutor come and take his seat on the bench with the judge, (which is a very common practice,) he may have the miserable wretch at the bar disposed of just as he pleases, from hanging, down to judgment respited and discharged.

Some time since, a man in the employment of the East India Company, received a sentence of seven years' transportation, for having on his person three pennyworth of tea, which was found on him as he came from the docks at the dinner-hour. The man stated that he picked it up on the wharf, and showed the officer where more was lying. The chests full of tea are always put out on the wharf to be examined, and, if needful, to be repaired after the voyage. In hammering, it often happens that the smaller particles of the tea shake through the crevices of the joints of the wood, and this is never picked up, if it be only a small quantity. The man had no business with the tea, and he must be considered guilty. But can any one believe, if the prosecutor had been a private person his sentence would have been so heavy, particularly as he brought a thirty-five years' excellent character into court? Several men, without the advantage of such a character, had been for the same offence, frequently before, punished with three and six months' imprisonment. On this occasion some gentlemen from the India House came and sat on the bench, and told the judge that they had lost a great deal of tea lately; so the judge, being of Lord Ellenborough's

opinion, as avowed in the House of Lords three years since, viz. that it was of little consequence whether they had the innocent or the guilty, the object being to deter by example, —paid all the losses of the Company off upon this poor devil.

In 1827, when four troops of the 10th and 12th regiments went out to Portugal, under Colonel Clinton, there was a man named Robert Lee discharged upon sixpence per diem. As the officers were breaking up their establishments, much interchange of household property took place, and many things were given away by the officers to the servants in the barracks. On this occasion, Lee purchased a small portable writing-desk of one of the servants, which, he says, the man told him was given him by his master. For this offence Lee was apprehended, and committed to Newgate to take his trial. Lee prepared for his defence, and his trial was fixed; when Major D—— came to the Old Bailey court-house, took his seat on the bench, and spoke to the judge, who inquired, when Robert Lee's trial came on, and was told, the next morning. "Let him be brought up now," said his lordship. In vain did the man state, that his trial being fixed for the next day, his attorney and witnesses were absent. He was tried on the spot, and sentenced to seven years' transportation. He was afterwards retained in Newgate, where his conduct as it had been all through his life, was most exemplary, and he was pardoned after about four years' imprisonment. Sir Robert Ponsonby, who was in England a short time since from Malta, having known the man as a good soldier for many years, and particularly admired his conduct at the battle of Waterloo, took up his case, and endeavoured to recover his pension of sixpence per day, which had been forfeited by the conviction, but failed in his attempt. Another military gentleman of great philanthropy, has recently been more successful, Sir John C. Hobhouse having replaced him

on the pension-list; and thus, as it were, revoked the conviction.

And I remember the case of a boy being brought in one day for picking the pocket of a Marlborough Street magistrate, who came early the next morning and took his seat on the bench, and caused the prisoner to be tried and sentenced to fourteen years' transportation, even before the messenger could acquaint the prisoner's father that his son was in custody, although he lived at no farther distance than Monmouth Street. In this case it was of no consequence; the boy was a notorious thief, and had been twice in Newgate before. It only shows how the judges, for the accommodation of *gentlemen*, depart from the rules laid down, *such as they are*. This boy said, when he came back, "I think myself lucky, as I robbed a magistrate, that they did not hang me in the dock-yard before breakfast." He went away afterwards to the Euryalus, at Chatham, saying he had not had a fair trial. It would be wise to show no favours, and treat them all alike, both prosecutors and prisoners.

Reverting to the pardon power, if we waive all other considerations, and take the number of pardons granted by the secretary, as cases really deserving a reversion of the sentences passed, no severer censure need be pronounced on the Old Bailey court:—either the secretary is right, or the court is wrong; they cannot both claim correctness. But I am prepared to show, before any competent authority, that they are both in error, in a great number of cases. This statement may probably be met with a sneer from a certain city *coterie*. But I defy sarcasm. My knowledge is obtained from facts, which are stubborn things to combat. I have not sat down to write *ad captandum*, but solely for the purpose of exposing abuses, which cry loudly for reform; to show, that under cover of a privilege to remedy wrongs, that influence often sets at liberty the most atrocious delinquents, whilst an inno-

cent man, or a first and trifling offender, who has, in the uncertainty of the acts of the Old Bailey court, fallen under a heavy sentence, is passed over unheeded by the present pardon power. I know, if inquiry be made of any one in the office from whence the pardons are issued, or at the Old Bailey, this will be denied by him, and *ex uno disce omnes*; but even in the council, where we might expect the most deliberate consideration would be given, in selecting objects for suffering the severest penalties of the law, viz. death, much uncertainty and misdirected judgment is observable. It is a common remark among the city authorities, that a large majority of the malefactors selected by the council for execution have been in opposition to those which, in their judgment, derived from a knowledge of the facts of the cases, they considered most likely, from their crimes, to have suffered; and it is this, perhaps, which occasions so much exertion on the part of these gentlemen, in every case, to save the malefactor when ordered for execution.

I will instance some cases of the hap-hazard way men have been selected for suffering the punishment of death. Last year, in February session, in one batch of men under sentence of death there were an unusual number of old and known desperate offenders, particularly one man, named Allen, cognomenized "Jack the Painter." He had rendered himself famous for the number of burglaries he had been known to commit. The Recorder, when he passed sentence of death on him, in a most emphatic manner exhorted him to prepare for death, telling him he had no hopes of mercy. There were also two other burglars, from the neighbourhood of Southgate, who were also known to have been guilty of a number of atrocious robberies; yet, when the Recorder brought down the report from the council to the prison, on Wednesday, the 13th of April, it appeared that all the old and desperate men had been passed over, and respited, except a young man, aged twenty-two, of the name of Ellis, who was

left, to suffer the following Tuesday morning. This young man, although convicted of stealing a quantity of woollen goods, was, notwithstanding, known to the court to have been only the receiver of them, having a guilty knowledge of their being stolen; but as he refused to impeach the parties who had committed the robbery, or those of whom he bought them, he was, under Sir Robert Peel's act, tried and convicted for the burglary, a part of the goods having been found in his possession. He did not deny his guilt as a receiver. He proved in court, that he had borne a good character for honesty and industry, up to twelve months before the commission of the crime for which he was placed under sentence of death; consequently could not be considered an old offender. Every one in the prison, and those immediately connected with it, besides the sheriffs and aldermen, were petrified with astonishment when the order for his execution was made known: they all, *unâ voce*, declaratively or optatively, condemned the conduct of the council. The consternation and interest this affair excited are inconceivable. Letters and statements were immediately forwarded to Lord Melbourne, (the secretary of state,) Lord Brougham, the Attorney-general, &c. &c., from all who knew any thing of the case. The robber himself sent in a written acknowledgment of his own guilt, detailing all the facts connected with the robbery, and showing that Ellis was only the buyer of the goods, the extreme penalty of the law for which offence is but fourteen years' transportation. He was in consequence of these applications respited, and transported for life. It subsequently turned out, that Lord Brougham, whose peculiar province it is in the council to examine the legality in each of the proceedings, before a malefactor is consigned over to the executioner, was, by some unusual occurrence, absent from the council when the selection of this young man was made for death. Ellis is now in Hobart Town, a teacher in a school; and it would be but justice to send out a mitigation of his

sentence, knowing, as they do now at the secretary's office, that he did not commit the robbery for which he was tried, and sentenced to death. I should have said, one of the actual robbers was condemned with him, but respited with all the others in the same batch. A very melancholy circumstance arose out of this case. The sister of Ellis, who was a remarkably fine young woman, had been recently married to a respectable tradesman at the west end of the town, and received so intense a shock of the nerves, on hearing of her brother being ordered for execution, that she never recovered, and shortly afterwards fell a sacrifice to the error of the council, in so unnecessarily and thoughtlessly punishing the innocent relatives of this young man. Ellis himself was well educated, and had been generally admired for his filial and all other duties; but an unfortunate *liaison* with a female all at once led him into expense and bad company. Sixteen affidavits of these facts were prepared and presented to Alderman Copeland for the parties to be sworn; but he refused to take them;—furnishing us with another instance of the many obstacles thrown in the way, even in a case of life and death, of the prisoner's friends to prevent their proving any statement or fact in his favour after conviction. Let us compare this case with Ikey Solomon's—a most notorious buyer of stolen goods, and an open encourager of depredators for upwards of thirty years—who was tried and convicted under precisely the same circumstances; that is, for a burglary, although they knew in his case, as in Ellis's, that he was but the receiver. Solomon was found guilty on two indictments—one for committing a burglary in the neighbourhood of Cheapside, and the other for receiving goods, knowing them to have been stolen. Solomon felt assured in his own mind that if he was once convicted capitally it was the intention of government to hang him; and, in consequence, his counsel took an objection on a point of law in the conviction of the burglary, which was reserved for the decision of the judges.



The question was this: whether Sir Robert Peel's act, making the robbery to lie with the party where the goods were found, unless accounted for, could apply to Solomon, the law having been made subsequently to the commission of the offence for which he was tried. After ten months' stay in Newgate, I wrote a letter to the judges, begging them to adjudicate on his case. They decided against him, and he expected nothing less than death when he went up for sentence. But for both offences he was only sentenced to fourteen years' transportation, with permission to join his wife and family at Hobart Town. Well may the thieves exclaim, "The biggest rogues get off the best!" If, in answer to this, the authorities should say they know best what they are about, and affect (as they too often do when an inconsistency is pointed out) to have had information from Solomon which induced them to favour him and mitigate his sentence, I reply, that during his confinement I wrote a letter making an offer of this nature for him, which was rejected, and very properly so, as Ikey Solomon had nothing of any utility to disclose which could be available in competing with crime. He had been three years out of England, and at most could only have communicated the names of some men who were in the habit of committing crime in London, which names are already known to hundreds in the metropolis. Here, then, is a young man, of former good habits, aged twenty-two, having fallen into bad company within twelve months only, ordered for execution on a first offence; whilst another old and known offender, who had been thirty-five years in the commission of crime, is let off with seven years' transportation for each offence; and this, too, after having been put on his trial on seven other charges, from which he only escaped for want of evidence, arising out of the lapse of time before he could be brought to trial, occasioned by his breaking prison and flying his country.

Since some of these remarks were written, the following case has occurred, which so forcibly shows the truth of what

has been said, that I avail myself of the opportunity to give it further publicity.

At the August assizes for the city of Chester, two persons, named Knight and Kendrick, were tried upon two indictments charging them with two distinct felonies. The only evidence against Knight was, that when he and Kendrick were apprehended, Kendrick (who had sold some stolen property) stated to the officers, in the presence of Knight, that he (Kendrick) had received the stolen goods from Knight, who was the original thief. Knight, who must have heard this statement, neither admitted nor denied the truth of it. He said not a word. Mr. Dunn, who defended Knight, submitted that the statement made by the accomplice Kendrick was not evidence against Knight. The Recorder (before whom they were tried) expressed his surprise that any gentleman at the bar could seriously urge such an objection, and observed, "that in the course of his experience at the bar he had known similar statements admitted in evidence in a thousand cases," and overruled the objection. The prisoner was found guilty, and sentenced to twelve months' imprisonment upon the first, and to be transported for seven years on the second indictment. A petition, stating these facts, and praying a free pardon, was presented, through the prisoner's counsel, to the Secretary of State for the Home Department, immediately after the last summer assizes. In reply to that petition, Mr. Lamb wrote to Mr. Dunn a letter, stating "that there was not sufficient grounds to justify Lord Melbourne recommending the prisoner to his Majesty for a free pardon." The prisoner's counsel still feeling confident that the objection to the evidence was fatal, advised the prisoner to present a petition to parliament. A petition was accordingly prepared, and placed in the hands of Mr. Jervis, M.P. for Chester, for presentation to the House of Commons. A further inquiry was then instituted, the result of which was the following letter:—

“ Whitehall, May 16th, 1833.

“ SIR,—Viscount Melbourne having referred for the opinion of the law officers of the crown, in the case of William Knight, under sentence of imprisonment and transportation, in whose behalf you interested yourself, I am directed to acquaint you that, in consequence of their report, his lordship has deemed it advisable to recommend the prisoner to his Majesty for a *free pardon*.

“ I am, sir, your most obedient humble servant,

“ G. LAMB.

“ James Dunn, Esq., &c. &c.”

In this case, when the petition was sent in, the usual answer was returned, “ Not sufficient grounds to justify,” &c. &c. This is the reply given on all occasions, whether the case has had attention or otherwise ; but when the affair is found to be in the hands of able men, and likely to be brought before the parliament, then comes a letter to say the law officers of the crown have decided in the man’s favour. Why did not Mr. Phillipps, if he had doubts on the case, consult the law officers of the crown, before he sent the answer, “ No grounds,” &c. &c. But the truth is, as I have before stated, that not one petition in a hundred is looked into at all. There is, however, in this case a still more serious reflection for the lovers of justice. The Recorder of Chester observed on the trial, “ that in the course of his experience at the bar, he had known similar statements admitted in evidence in a thousand cases ;” that is to say, as it now turned out, he has known one thousand men punished unjustly. How many more recorders may there not be with the same, or more extensive knowledge of this nature ? It was well said by Anacharsis, “ that wise men pleaded causes and fools determined them.” The declaration of the Recorder of Chester, in this case, is of itself “ sufficient grounds” why a *court of appeal* should be instituted forthwith. Another case is now in the hands of a mem-

ber of parliament, who cannot proceed until he is in possession of the documents to prove the prisoner's innocence; these documents are in the secretary's office, and the clerks refuse to give them up, whilst certain other persons hold out threats that if any movement further is made, that the man shall be sent off at only an hour's notice. This is a more cruel case than the former; here the man is known to be innocent, the former may be guilty, but was convicted illegally. The case will, however, at any events be brought before the House, and agitated until a revision of it be obtained.

## SECTION II.

### *The Privy Council.*

I HAVE before said, the thieves think all is a lottery at the Old Bailey. Every one, however, knows, from the judges to the thief, that all is a lottery with the council in selecting the objects to suffer death; and it would seem that the Recorder himself is not consulted on these occasions—or how is it that Allen, *alias* “Jack the Painter,” escaped, when he was the only one he had desired, out of all the capitals that session, to prepare for death? Did the Recorder communicate to the council what he had said on passing sentence, or did he recommend that Ellis should be executed without any such warning? Mr. Wakefield says, “There is gross injustice in every decision of the privy council;” and the reason is, the selection is made in the absence of any proofs of the matter in connexion with the cases they meet to decide on;—a meeting, too, called for other purposes, of a diplomatic and political

nature, and not specially for the grave and serious business the subject demands. Nothing appertaining to the question of life and death is more unfair than the mode they have of performing their responsible duties. We must presume, the secretary is expected to be prepared with some particulars of the several cases they meet to take into their consideration. Let us inquire what he knows more than any other member of the council. His only sources of information are through the senior clerks of his office, who are in daily communication with the officers of Newgate, where all kinds of exaggerated reports, in every case, both for and against the prisoners, are always in circulation. These reports are picked up, and form memoranda to go into the secretary's hands, for his guidance and advice to the council. They hear no evidence, and, from what has been before said, do not even consult the judge who passes the sentences on the prisoners.

In June session, 1831, John Cronie was sentenced to death for "feloniously and unlawfully stabbing, with intent to kill and murder, Thomas Fuller, a policeman." This man, Cronie, was one of the most ferocious of beings; he had dogged the policeman a whole day, until he found an opportunity to attempt the perpetration of his deadly purpose. During his confinement in the cells of Newgate, although in his own mind assured he should suffer, he threatened to stab one of the keepers, and actually made preparations to do so. When the report came down, on seeing the reverend ordinary of Newgate and the Recorder's clerk enter his cell, he said, "Well! I am prepared; I suppose I am to die?" This man was respited, and sent to the House of Correction for six months. It was the opinion of all persons acquainted with criminals in Newgate, that they never saw a case more deserving of death. It was a contemplated and deliberate attempt of murder, of which there is not a stronger case in the Old Bailey calendar. It was said that a popular Irish member of parliament obtained this favour for him; but

upon what grounds this report was founded I know not.\* Again, in December session, 1831, Samuel Connix was sentenced to death for stealing plate, the goods of his master, Captain Paulett, in his dwelling-house, in Hertford-street, May Fair. This man was butler to Captain Paulett; and stole the plate which it was his duty to protect. He received a free pardon, without one mitigating circumstance coming out in his favour, before or after condemnation. I have an inkling that this favour was obtained through the good, but mistaken feelings of his master. The case carries internal evidence in itself, that interest and influence must have been engaged in liberating him; and I cannot help thinking the man was conscious throughout that he had a friend behind the screen to protect him, from his very great nonchalance whilst in the condemned pew before the other inmates of the prison. John Harris, last January session, was sentenced to death for a highway robbery, attended with violence, and sent to the House of Correction for one year. Alphonsie Reppien, “for stealing six gold rings, value eighteen pounds, the goods of Christopher Rowlands, in his dwelling-house in Coventry-street,” was, in June session, 1831, sentenced to death, and afterwards sent to the House of Correction for six months. In the same session, James Evans was under sentence of death for stealing a calf near Barnet, the property of Christopher Holman: this man was confined in the House of Correction for one year. If in any of these cases it had been shown there were circumstances which developed themselves subsequently to the conviction, nothing could be said in the way of complaint. On the contrary, every voice would be raised in praise of those who were the means of saving them from severe punishment. It is quite impossible for me or any one to divine the motives which influence the acts of those who determine on these cases, all being conducted in secret. A

\* See the further account of this man under the head of Sanguinary Laws.

general and tolerably correct inference may, however, be deduced, when we become acquainted with the merits of a large number of cases on which they have adjudicated, if I may be allowed the term in speaking of such a power. In the few instances I have given above, (and I should have added many more, but for fear of being accused of pleonasm,) I have been careful to select those in which no doubt ever arose in any person's mind as to the prisoners' guilt, and in which, in almost every case, I had the acknowledgment of guilt from the condemned themselves, either to myself or through a friend on whom I can rely; and in these cases the malefactors themselves were in many instances equally surprised with myself, and others who are observers of these matters, at the unexpected turn in their favour. I say a tolerable inference may be drawn, when we see, in the revolution of one year, scores of cases occurring, in which good and thinking men, on diligent inquiry, are induced to believe certain prisoners innocent, and that these cases are rarely or never attended to, unless through the agency of powerful influence; while, on the other hand, we see pardons daily granted for the commission of the most atrocious crimes, wherein the offenders themselves did not attempt to deny their guilt. Some who have a knowledge of this office go so far as to say, money will be received, and procure pardons. Although this is very confidently spoken of I do not believe it. Some of the underlings who are employed in working this system may be, and I believe have been, detected in receiving bribes to misrepresent facts favourable to a convict's case; but, I apprehend, it is with persons engaged at the convict stations who are looked to for reports of conduct, and other matter connected with the establishments, in which instances of corruption have been developed. All this, however, only further demonstrates a defective system. Although I cannot speak from my own knowledge as to bribes, I can confidently assure the world, that persons of some authority in the office now under consi-

deration, have been worried (if I may use the expression) into grants of pardon, and even intimidated by threats of exposing the corruption of all the parts of this piece of semi-criminal machinery, and in consequence have made concessions, which, under an independence compatible with their important duties, ought not to have been ceded. The truths here stated, or any one of them, is of itself sufficient to demonstrate the propriety of the abolition of such an irresponsible power—the power of dispensating life and death—of slavery or freedom, to individuals, is an awful one; but it is a dreadful consideration, when such a power is placed in the hands of men who have no open or regular mode of procedure to enable them to arrive at truth—nothing by which they can expand the range of their intelligence, or give them the slightest claim to exception from error; the putting such a power into their hands makes them obstinate and self-willed, instead of raising weaknesses above, sinks the mind below, humanity. It would be a shallow argument to urge in its favour, that none but gentlemen of rank, education, and of first-rate legal talents were employed in this extrajudicial business; but when it is known that the main spring which moves the whole machine, is an individual whose previous avocations were the very opposite to study or reflection, what can be said against the abrogation of the whole system? It matters not to the injured man suffering under injustice, whether it be the effect of tyranny and oppression, or that of carelessness and neglect. On the other hand, the public are not sufficiently protected against the discharge of men who cannot live in society without committing crime. Never was there an office which, like the Augean stable, required so much the power of an Hercules to cleanse it from the perilous stuff with which it is encumbered. There are three leading men engaged in it, none of whom trouble themselves about the fate of 13,830\* of their fellow-creatures

\* The number convicted in England and Wales in the year 1831.



convicted in one year, but leave the whole business of correcting errors, and sifting truth from falsehood, in matters which involve the questions of life and death, liberty or slavery, of this large number of human beings, to be performed by those who have sprung from the occupation of the meanest (not to say degrading) situations in life; one individual who has influenced these serious cases of judicial importance is known known to have been a waiter at a brothel, and subsequently twice a bankrupt. It is absolutely preposterous to suppose the principal secretary of state ever interferes, or knows any thing of the cases, but in very extraordinary instances, when the attention of the whole world is called to them; there is then the private secretary, who does not even profess to have any share in the management of such business. But the under secretary does, and if he were constrained to hear every case and decide thereon, he would at least assume an official character: as the business is now performed no one knows whether he does any thing or nothing; whilst we know if an application be made to these gentlemen, that the applicant is referred back to the underlings in office, and that through these subordinates only can any man gain a moment's consideration, let his case be what it may. The petition, which is generally addressed "*To the Right Honourable \* \* \* his Majesty's Secretary of State for the Home Department,*" is as much a fiction as it used to be in addressing his Majesty himself. I am acquainted with a case which occurred only a few weeks since; when a gentleman met the principal secretary in Grosvenor Square, and named a case of great hardship to him, soliciting his interposition, but was referred to an underling in the office, who, having his particular motives, will not attend to the case, although the principal secretary himself thought it was one which ought to have immediate attention. So many subordinates are engaged in making reports of what they hear in particular cases, that it is my belief any one of them might turn loose on society the

most desperate offender after his conviction, and at the same time prevent justice being done to a man innocently convicted, only by taking on himself to report, favourably or otherwise, in a case wherein he might be engaged to make inquiries. After such a view of the home secretary's office, is it too much for a man to predicate that any alteration cannot make things much worse? All their proceedings are conducted in the dark, and should forthwith be brought out into the open daylight, by instituting the court I have spoken of, and leaving the whole business of altering the sentences of criminals to the judges, who would hear evidence, comment, and decide, in the face of the world, on each particular case. Such an amendment of the system is

“What the happy to the unhappy owe.”

As it is now conducted, the members of the council may as well adopt the plan the condemned criminals say they do, viz. as soon as they see the list of names, determine on how many out of the number will suffice for example, (and, latterly, how many the public will patiently see executed,) then write the whole of the names on slips of paper, and putting them into a bag, call the Recorder into the council chamber, and desire him to dip in for the names, as many as may be wanted.

Bentham, on capital punishment, says—“The danger of the abuse of capital punishment appears still more striking in those cases where it has been made the instrument of the passions of men in power, who have met with judges easily intimidated or corrupted. In these cases, iniquity, invested with all the forms of justice, may escape, if not suspicion, at least detection.

“The infliction of death presents, indeed, to the prosecutor, as well as to the judge, an advantage which would attend no other punishment. I mean a greater security in crimes, by stifling at once all future appeals to justice. Whereas the victim of oppression, however trampled upon, may always,

while he lives, find some favourable opportunity to demonstrate his innocence, and become his own avenger. Thus, judicial murder, justified in the face of the public by a false accusation, ensures the triumph of those concerned in it. They would have every thing to fear from a less degree of guilt ; but the silence of death puts the seal to their impunity."

No one for a moment can entertain any idea that influence or interest have insinuated themselves into the council: it is their total want of correct information. There can be no corruption there on a subject of this kind ; no deficiency in percipient powers, had they the means of coming to a right judgment. It is in the secretary's office where the influence is discernible. Where there an entire absence of all other proof of undue influence, the cases I have cited would be sufficient to convince any sensible man that the pardon power is most grossly abused. These are, however, but a very small number out of those I have noted within these last four years. The instances wherein culprits are discharged through the pardon office, by means of influence, regardless of merits, are of continual occurrence. The manner in which noblemen and others of aristocratical interest are induced to interfere in these cases, is not unfrequently at the solicitation of a favourite servant ; a butler, a valet, or lady's-maid, who are rendered unhappy by a brother or cousin being under a heavy sentence of the law, and naturally enough avail themselves of their proximity to power, and entreat their masters and mistresses so importunately to interpose with their good offices, that even for their own sakes they interfere ;—for what man can be happy, if the people immediately attendant on his person are miserable ? Not a few have escaped through electioneering interest. When the condemned party has a father or brothers possessed of votes for a borough, the member is speedily given to understand, that a pardon for their relation would bind the whole family for ever to his interest in the borough : but these instances will of course be now less rare, as the mode

of returning members under the reformed system will place them above the minacious arguments of a family of voters. So sensible is Mr. Capper of the use which has been made of this species of interest, that, whenever he hears of an application made by a member of parliament on behalf of a prisoner under a sentence, he is sure to inquire the birthplace of the culprit, and thus, by connecting the place with the one from whence the applicant is returned to parliament, is enabled to draw his inference of the motives which have induced him to interpose; although it makes very little difference in the result. It will be seen, from what has been said, that the gentlemen in the secretary's office are themselves surrounded and encumbered with insurmountable difficulties, in their endeavours to ascertain the truth, in almost every case now brought before them; the obstacles, indeed, are so many against a right decision, that they can scarcely ever come to an accurate judgment. In many cases there are two opposite parties petitioning for contrary objects. I have myself often written out petitions for prisoners, stating mitigating circumstances, and praying for them to be allowed to stay in this country, and the next day have been applied to by another person to prepare a petition entreating the same parties' speedy embarkation for the colonies. Many persons, feeling themselves injured, trust their causes entirely to those who have a latent interest in deceiving and misrepresenting them and their cases. And I have very good reason to believe, that in many instances petitions and documents have been forged, and sent into the secretary's office with prisoners' names affixed to them, for the accomplishment of purposes most diabolical.\* These gentlemen have a practice, also, of holding communication with the prosecutors, both at their office and through the governors of

\* Mr. Wakefield, in his work, alludes to a case of great enormity, in which the death of a person was supposed to have been accelerated by a deception of this kind being played off at the secretary's office.

the prisons; the latter of whom are almost hourly doing this, after convictions; whilst the prisoners' friends are making statements, and sending in proofs of innocence, or mitigating facts in their behalf, the truth or falsehood of which should be sought for in other channels of a disinterested character. Now, nothing is more calculated to perplex them than this course, which is, moreover, very unfair towards the prisoner, as they generally impart all the matter got from the prisoner and his friends to the prosecutor, without affording the same advantage on the other side; thus depriving them of the opportunity of disabusing the mind of any impression made from interested parties by fictitious tales. Although the prisoner under conviction must be considered to labour under great prejudice, still the prosecutor who comes forward voluntarily to counteract any good contemplated towards the prisoner, cannot but be himself suspected of having sinister motives.

\* "Man's of a jealous and mistaking kind."

There have been instances wherein prosecutors have been so extremely uneasy when their prisoner has been detained in Newgate, that for years they have never ceased to importune the secretary's office for their removal. One of this kind occurred some time since. A chief clerk of Messrs. —, attorneys, was sentenced to fourteen years' transportation for embezzlement. He was detained in Newgate for nearly two years, and, as a matter of course, was led to expect a commutation. At length he was sent to Sidney, through the entreaties of his prosecutors, who, no doubt, did not fail to urge cogent reasons why it should be so ordered. Their motives we of course cannot reach; but we may presume, from their perseverance and anxiety on the subject, that they had powerful and interested inducement to wish themselves rid of their former confidant, after having made an enemy of him by the prosecution. They are not to blame for having instituted

proceedings against the man who robbed them; but they cannot be excused of rancour and revengeful feelings in forcing a man, with a young and interesting wife and large family, out of the country, after he had served them for many years previously with fidelity; and by which his wife was brought to a premature grave. About two years after this man left his country, his eldest son, a youth aged fifteen years, committed an offence for the avowed purpose of being sent out to his father. This fact was stated to the court, and he was accommodated with seven years' transportation, with permission to go out immediately to his parent. The history of this family, together with the father's case, is very interesting, and shows, in a strong point of view, the advantage prosecutors having vindictive feelings will take, backed by influence, and the way in which the mitigating office suffers itself to be controlled; to prove which is the main object I have in alluding to it.

When a convict is detained in Newgate, it is always presumed there are mitigating features in his case, and that he is in some measure an object of commiseration; and a commutation of one half his time is generally calculated on. It is of no consequence by whose influence he may have been retained. He is never on any occasion removed, as long as the governor feels satisfied with his conduct, barring any interference at the secretary's office, which occurred in this unhappy man's case. The governor of Newgate was not only satisfied with his conduct, and found him an acquisition in managing one of the yards of the prison, and assisting his clerk in writing, but was, it is thought, from benevolent feelings towards him and his family, much averse to his being sent away. There was, however, no resisting the secretary's order.

Another case occurred a few months since. A man was sent to Woolwich, under a promise of detention in England, solely on account of a widowed woman, whose only son he

was. The prosecutor, whose confident he (the convict) had been, heard of the circumstance, and went to the secretary's office on a Saturday, and made some statement: the following Thursday the man was drafted off to join a transport ship, about to sail for Hobart Town. The prosecutor inflicted this misery on the poor widow purely on account of the fear he was in of the convict's making known a secret in the manufactory of an article he dealt in. It may be said, at the secretary's office they never make a promise of this nature, as they always avoid any thing in the shape of a pledge to all applicants. So indeed they do to the friends of the petitioner; but it sometimes happens that one of their own particular acquaintances undertakes the office of mediator, when they are less ceremonious in making a promise in confidence. Such was the case in this instance; but it was afterwards broken for the accommodation of a prosecutor. It may with propriety be thought, that the public are only concerned in knowing that strict justice is done, and that in both these cases the men had no more than their deserts, which is admitted; but the statement shows, at least, that all is not fair and above-board, and that the conduct of the pardon power is partial. If, however, all the cases had attention which are represented to the secretary as deserving, full one half must either be pardoned or mitigated, which would place the Old Bailey court in the curious predicament of only being right in its judgment once out of twice. Some misgiving of the Old Bailey court, and its liability to err, I cannot but think has possessed the secretary and his officers. This I infer from their too great readiness, on some occasions, to be led and turned from their purposes, without any, or at least sufficient, reasons being shown for their relaxation in punishment.

Last January, a man named Henry Wells was ordered for execution, with another malefactor who had committed forgery. Wells had been convicted of horse and cattle-stealing, and was said to be an old offender. However, on the appli-

cation of some of the city authorities, after they had in council determined on his death, he was respited, without one new fact coming out in his favour; at least none was ever given, and they are seldom or ever withheld when known. I believe him to be a very old and astute rogue. The forger suffered. All must feel pleased when a fellow-creature is snatched from a violent death; but these instances of irresolution cannot but be considered as indicative of a great want of consideration in the first instance. It would seem as if they said, when in doubt over a case, "O, order him to be hung, and see if any body will come forward to tell us we are wrong!"—thus playing with justice. It has often been asked, by what right we take life at all—the life we cannot give? If the nature and construction of man, as combined in society, seem on occasions to demand the sacrifice of a man's life to keep it in order, we should at least treat the subject with the solemnity and consideration its importance claims;—not order a man for execution one hour, and, on an after-thought, or at the request of an individual, whether a LADY or gentleman, recall the order, affording the world examples of vacillation on a subject the most awful for man's deliberation—one that demands the most sacred attention from all on whom is imposed the painful task of voting on this question. The character of the British laws demands that less levity should be evinced in a matter of life and death. Would it not be a good improvement of the present system, if a man placed under sentence of death were given to understand that another tribunal was open to him, in which, if he had any thing to urge in stay of execution, his witnesses and counsel would be heard? The court of appeal, when established, would very usefully perform this duty; after which, if a reservation of the man's fate were still thought advisable for the king and council, the last judge's notes might be laid before them as a guide for their decision. I cannot imagine any more efficient measure for the authorities to adopt, for



the satisfaction of the public in questions of life and death. No dissatisfaction could, under such a plan, ever occur, as to the proper objects for punishment, in inflicting the extreme penalty of the law. This measure is rendered less troublesome and more practicable by the recent amendment of the laws regarding the offences which are to be visited with the punishment of death. Whatever differences of opinion might still remain as to what crimes should and what should not be deemed worthy of death, the world would, under my proposed alteration, have the assurance of the laws being fairly administered, and that every means were adopted for the prevention of errors.

I know a case, in which a man suffered from the mistake of a person writing a word, and which mistake was afterwards discovered. A gentleman who had given his evidence against a prisoner on a capital charge, and who was subsequently sentenced to death, having reason (from an after-conversation with the attorneys for the prosecution and defence) to think his evidence had been misunderstood, felt anxious, after the culprit was ordered for execution, to say something in the way of explanation, and, by desire, committed to writing what he had to say—it being the only mode then open to him for correction of his evidence; but, probably, not being a good philologist, he used a word in explanation of a certain point, and this was the pivot on which the man's fate turned. The paper was not considered sufficiently explanatory to justify the authorities in reversing the order for execution, and the man was executed. The gentleman who wrote the paper, conceiving the document ought to have saved the man, expressed some surprise at the result, when he was told, if he had used another word instead of the one he inserted, (and which word, in a measure, may be considered synonymous with the one used,) the man would have been saved: it then occurred to the gentleman that the word wanted was precisely the one he had intended to write. The word he intended to

use was *irritation*, but in his perturbation and agitation of mind he wrote *laceration*. It was a rape case; it is therefore needless to add any further remark as to the difference of the meaning of these words. After the occurrence of such cases, it surely will not be said by any good Christian that in a case of life and death the second hearing will be too troublesome.

The council and secretary now affect to take every pains in coming to a right decision; but what they do is of an occult nature, and unsatisfactory. How much better would be the business done in open court, reserving to themselves the prerogative of merely pardoning the culprit; having the comfortable assurance of knowing, in every case of capital example, that the documentary information was founded on data on which they could with confidence rely. It is now all left to chance, and what is called benevolence of individuals. I ask, what has benevolence to do with these cases? Use all the benevolence you can command in making the penal laws; spread your nets far and wide to catch the guilty, taking care to leave holes large enough for the innocent to escape through; after which, let the current of justice go on uninterruptedly—place no dependence or reliance on the exertions of individual feelings of humanity, which are as often exercised in a wrong as in a right cause. The course I have pointed out, if adopted, would at once sweep away all the applicants at the secretary's office, on the question of life and death, and place all other cases of a criminal nature on a proper basis.

Mr. Wakefield says, page 130, second edition:—

“Almost every Old Bailey session subjects the secretary of state to the pain of denying, absolutely or for a time, the prayer of some heart-broken wretch, who, face to face with the judge, half choked with grief, and perhaps kneeling at his feet, pleads for the life of a father, a husband, or child. To undergo this pain, not less, probably, on the average, than

once a month, must, one would think, injure the health so as to shorten the life of him who suffers the pain ; yet the late secretary, who had suffered it for a great many years, was, at the end of his career, and *in his legislative capacity*, adverse to abolishing the punishment of death."

This consideration affords another strong argument in favour of the alteration proposed. The secretary of state being the last appeal—that is, after the order for execution from the council has been given, he is placed in a most agonizing situation ; so much so, that no man ought to be subject to the pain of undergoing it. There he stands, like Atropos, scissors in hand, ready to cut the thread on which the life of men hangs ! If he consents to an interview with the relatives and friends of the malefactor, and "be made of penetrable stuff," what can he do but enter into their feelings ? And, should he refuse, it may be said the parties had new facts for his ear, and that it was not just to send them away unheard. Lord Lansdowne was so acutely alive to these distressing scenes, that not one occurred during the period he held the office which did not draw showers of tears from his sensitive nature. Sir Robert Peel's longer practice or tougher fibre enabled him to go through this abrasion of the nerves with more tranquillity, and apparent indifference. One case of application for pardon, in Sir Robert Peel's time, is much dwelt on by Mr. Wakefield—viz. Montgomery's, for passing forged notes. It forcibly shows how totally incompetent the secretary is to the duties assigned him, in judging of cases for pardon. Rumour, with his many tongues, had lodged false tales in the secretary's office, about a forged check, &c., even before the man was tried for the charge on which he was committed. The judges charge the juries to banish all reports from their minds, and to give their verdicts according to the evidence only they shall hear in court. This is right ; but is it not anomalous to see the power above the judges listening, in every case, to all the tales picked up and brought

into his office by the clerks about his person? In almost all cases of robberies and embezzlements on tradesmen, false reports are circulated as to the extent of their losses, in a hundred fold—frequently appealing to their creditors for a compromise or postponement of their demands: thus availing themselves of a trifling misfortune to get out of more heavy difficulties. Cases of this kind are known to every cosmopolite. I have known of many, and suffered in some instances of this nature. Others, again, magnify their losses merely to justify themselves in the prosecution. There is another feature in Montgomery's case, which is so applicable to what I have mooted—viz. that all applications for staying the execution of death should be made openly before a court competent to hear evidence on oath—that I cannot but allude to it.

Mr. Wakefield says, page 108,

“The first step taken by his attorney, after his committal to Newgate, was to call on Mr. Freshfield, the attorney of the Bank of England, and to offer that, in case the Bank would forego the capital charge, the prisoner should plead guilty to the minor offence, of having the notes in his possession, and furnish to the Bank the fullest information as to the persons from whom he had received the notes.

The proposal was favourably received by the Bank attorney, but with this qualification,—that, as the government had lately taken offence at the proceedings of the Bank, in dispensing of life and death by such compromises with utterers of forged notes, it was necessary that he should be prosecuted on the capital charge; but that, if the prisoner should put the Bank to no trouble in proving the charge, and should give all the information in his power, the Bank would make every effort to save his life. Upon this assurance, the prisoner's attorney, who considered it quite satisfactory, delivered to the Bank attorney a statement *in the handwriting of the prisoner*, which minutely described the means by which he had

obtained the notes. It was of course determined that the prisoner should plead guilty."

As this case is stated at great length, it will be sufficient for my purpose to add, that a short time after this understanding, the city marshal was publicly reprimanded by the lord mayor, for having made a similar promise, which made the Bank solicitor anxious, if possible, to retract the engagement he had entered into with the prisoner's attorney. But it was too late, as the confession in writing had been delivered to him. The prisoner therefore pleaded "guilty," relying on the previous promise, and the faith of the Bank's agent. He was, however, ordered for execution, when his friends caused affidavits to be laid before Mr. Peel, the then secretary of state, fully explaining the understanding with Mr. Freshfield prior to the trial. Mr. Wakefield concludes :

"Whether it were met by any counter-affidavit from Mr. Freshfield, none interested for the prisoner could ever learn, though Mr. Peel was vehemently urged to *confront* the two attorneys, and to ascertain the truth of the prisoner's statement. My own belief is, that Mr. Peel supposed the statement of the treaty with the Bank to be a pure invention; yet *if the secretary of state had been the presiding judge of an open court, nothing would have been more easy than to prove to his satisfaction every circumstance of the treaty.*"

Now, the opinion of all persons with whom I have conversed, including Mr. Wakefield himself, on this subject, is, that Mr. Peel sent for Mr. Freshfield, and, being angry at the arrangement made by him, instead of temperately inquiring whether such a bargain had or had not been made by him, probably said, on his entrance into the office—"How dare you, sir, to take on yourself the power of dispensing with life and death; by what authority do you act thus?" It may be imagined such a salutation would not render Mr. Freshfield, or any other gentleman, very communicative on a

subject calculated to call down further censure from an imperative secretary of state. It of course never came out what was Mr. Freshfield's reply; but I know it is the belief of several likely to know the truth, that he was addressed something after the manner above described, and which was certainly not the mode of arriving at the truth,—at least, it would have a tendency to make the interrogated party very circumspect in his replies, bearing in mind, all the while, the recent public censure of the city marshal's conduct on the same subject. Here, then, is a case of life and death, in which a dispute between the parties on the opposite sides of the question arises; and yet the supreme judge settles the point (or rather suffers it to remain where it was) without bringing them face to face. The court I have proposed would have decided the question to the entire satisfaction of the world, and with one hundredth part of the trouble this affair occasioned to all the parties concerned in it.

Extremes, it is said, meet. Sir Robert Peel piqued himself excessively on possessing great impartiality, combined with firmness, and in never allowing himself to be influenced by applications from titled men. Certain it is, that fewer pardons were granted in his time than in that of any other secretary; and it is the opinion of those conversant in these affairs, that many cases of merited commiseration were passed over by him, from the high sense he appeared to have of not interfering with the course of justice; whilst other secretaries have been too easily suable, and, being less obdurate, have granted pardons too frequently. The errors on both sides, then, tend to the same end, proving the office inefficient as a court of appeal. Another evil arising out of the exercise of this pardon power is, the monstrous acts of perjury it generates. The writer I have before quoted says, (alluding to capital punishments,) "In such cases, the mass of people in London appear to think that the crime of perjury is less than refusing to commit perjury for the prevention of death."

But it is not only in cases of death perjuries are committed. In almost every case of guilt, affidavits are to be had, in any number, for the purpose of laying before the secretary. The prisoners' acquaintances are, like themselves, disencumbered of their pure principles; and, freed from any remorseful monitions of conscience, are ready to swear to any thing in favour of a prisoner, when they know it is to go into the secretary's office, thinking if it does their friend no good it can do no harm. Their readiness to make false affidavits is promoted by the certainty they have of doing so with impunity, there being no instance known of the office into which they are sent ever having made any inquiry as to the truth or falsehood of the matter sworn to; and consequently no proceedings are ever instituted for the punishment of perjuries through this office, however gross and flagrant the perjury may be. A knowledge of this fact makes the magistrates refuse, in all cases, to take the affidavits of the parties, when they know it is to rebut evidence already taken before a court, on oath, unless the affair is taken up by some of the city gentlemen, and inquiries made therein. On the other hand, the innocent have great trouble, and encounter many difficulties, in inducing a party to come forward who may be able to depose to facts necessary for the elucidation of his case. And even when they are persuaded to make the affidavits, the magistrates' refusal to take them operates most cruelly against the prisoner. Thus, the system on one side facilitates and promotes the commission of one of the most heinous and mischievous of crimes, whilst on the other it throws every obstacle in the way of the innocent for the developement of truth. Should this state of things be endured any longer, when an open court would remove these causes of crime and injustice? In a court where man would be opposed to man, face to face, sworn and cross-examined in public, before a tribunal which would cause the false-swearer and suborner to be punished, there would be some probability of an approxi-

mation to the truth. Even in the Court of Chancery, where the deponents are altogether of another character, more conflicting documentary evidence transpires than is observable in any of our other Courts of law, where oral testimony is taken on oath in open court. It cannot, therefore, be a matter of surprise that, amongst those who are familiar with every species of crime, men should readily be found to perjure themselves, when they feel assured that no punishment will follow. Who shall say, that these facilities given to the commission of perjury may not have vitiated principles in many individuals, and thus have rendered them more predisposed to the perpetration of other crimes. It is certain that it cannot have a moralising effect; and is it creditable to any governing power to continue a system they know to be demoralising, and which promotes crimes?

The practice of granting pardons at all is a very bad one, and should be discontinued, as soon as the amended state of our laws will admit of its being done without injury to innocent persons. It has been one of the most fatal errors connected with our system of jurisprudence; their frequency, together with commutations, have destroyed, or rendered inoperative, all our laws of punishment, as enforced for example, and holding out a dread to deter others from the commission of crime. The thief's constitution and character is of an extraordinary sanguine turn: he grasps at every shadow to allay his fears of punishment. If they had not this tact of affording themselves consolation by delusions of mind, how is it possible they could endure existence? not to mention their general cheerfulness and boisterous merriment, in the intervals between their acts of plunder. I have before spoken of the chances they calculate on in escaping punishment altogether; but the custom of granting pardons in the way they have hitherto been done, either through influence, or for want of sufficient data to direct their judgment in each particular case, takes off the edge of the punishment, even when it is awarded by the judge. The prisoners may, every day after



the sessions, be heard to hold conversations on this head. One will say,—“ Well, I have got a friend, who will, I know, do something for me ; I sha’n’t serve long, I know !” Even those who have no hopes of such assistance do not despair, placing their reliance on being able to “ gammon good behaviour ;” and, being lucky in pleasing the captain, doctor, or clergyman, who they all know have a privilege of recommendation for pardons at the hulks ; and, when there, these hopes do not fail them, seeing and hearing of so many every week being discharged before their time of servitude is expired.

In the minutes of evidence taken before the select committee on secondary punishments, pp. 76, 992, Colonel Sir J. T. Jones is asked, “ Is there any mischief, as far as you are aware, arising from the practice of convicts being recommended for remission of sentence ?” To this question a very indefinite answer is given. I am, however, glad to see that the subject has been mooted ; and I hope some member will move for a return, at an early period, of all the pardons and remissions granted within these last ten years. If the question had been asked me, I should have answered : Now, gentlemen, you have touched the very root of the evil, and I adjure you to recommend, in the strongest manner, in your report, that pardons be forthwith done away ; adding it as my thorough conviction, that through all the ramifications of crime, and the punishments annexed for each offence, pardons and mitigations have totally neutralized the effects of all that the legislature has ever enacted against crime. The sentence of transportation is a heavy one, and should not be passed inconsiderately. Instead of making inquiry regarding the prisoners *after* sentence, I say, alter your plan, and be diligent in acquiring all that regards the prisoners before you award the sentences. Learn their history and previous character,—and such a report might easily be obtained through proper officers to make inquiry, and a bench or committee to superintend and confirm the same, for the judge’s guidance.

One half the severity would be efficient in repressing crime, and much diminution of expense would be effected, were it only exercised on a principle of certain execution. So unconscious of the effects which pardons have on the hardened offender are the city gentlemen connected with Newgate, that when they are granted, there is no greater exhibition of their industry on prison points, than is shown in their desire to persuade the pardoned, and the other prisoners, that it is a great boon, granted him, not for any proofs of his innocence, but in consequence of particular circumstances. This course is adopted only to avoid impugning the court before which the man was tried; so unwilling are those to pardon who have done the wrong. If they could philosophize on the effect this is calculated to produce on the minds of the prisoners in general, they would pursue a diametrically opposite course, and invariably make it out to their fellow-prisoners that innocence only brought the pardons, and that nothing else could ever avail a man under sentence. This would remove the last prop of the thief's hope, and at once annihilate all future formation of chimerical notions of escape from punishment. Abrogate the whole of the present system, especially that part which places so much of the business in the hands of a party of tradesmen—the corporation of the city; a body among which there are but few philosophers, humanists, or metaphysicians: most of them are jobbers in goods and the funds, for base lucre, which petrifies the soul. Whilst it is under their management, no man of judgment will hope for improvement. Should there be a few gentlemen of good sense sprinkled among them, they are borne down, and their powers rendered inert, by the mercenary views of the others, who congregate together one day and hear evidence, which they forget the next, and which they never understood, having no knowledge of the mind of man beyond what relates to traffic, and thereby obtaining money.

## CHAPTER V.

## ON THE SANGUINARY CHARACTER OF OUR PENAL LAWS.

## SECTION I.

*Effects of Executions. Treatment of Malefactors under sentence of Death in the Cells of Newgate ; illustrating the necessity for an Alteration, particularly as regards Religious Instruction.*

Cavendum est ne major pœna, quam culpa, sit ; et ne iisdem de causis alii plectantur, alii ne appellentur quidem.—CICERO.

THE well-known fact, that in every country where the laws are most severe, the people are most in the habit of committing crime, would of itself be thought quite sufficiently striking to convince all law-makers of the inutility, and fallacy, of relying on sanguinary punishments as deterring men from crime. Fazakerly says, with great truth, “ Sir, there is something in the nature of man that disdains to be terrified ; and therefore severe punishments have never been found effectual for preventing crime.” It is admitted by all, that laws must be made against offenders, or the vicious (however they became so) would have immunity for the commission of depredations upon their fellow-citizens ; but, be it remembered, in making laws, that all offences have their origin in the state of society, and to alter that state should

ever be the chief object of the law ; never losing sight of the peculiar character of the people for whom the laws are made. The English are a people but little suited by nature to a system of sanguinary jurisprudence. We are unquestionably, as a nation, a courageous and generous race of men, and naturally revolt at every species of injustice ; there is, too, with the people at large, a high sense of feeling for the cause of humanity, qualities which render us unftted for a severe code of criminal laws ; and it will ever be found that punishments operate according to the character and disposition of the people to which they are applied ; excessive severity hardens the temper of all minds, and produces a re-action which nullifies their effect, the object of which ought to be prevention of crime. “ At hæc etiam servis semper libera fuerunt, timerent, gauderent, dolerent, suo potius quam alterius arbitrio.”—*Full. Epist.*

Crime will never be subdued by torturing any certain quantity of human flesh, or stopping the breath of any number of hundreds of individuals annually. As the object of law is prevention of crime, and thereby to secure the general welfare of the community, the punishment of an offender profits no one, and can only be supposed to be useful, as it may operate as an example to deter others from the commission of like offences. But this effect it never yet has had, or has been much over-rated. Experience (the best of all arguments) has already shown, that the infliction of the severest penalty of our barbarous laws (death) has not had any effect in deterring men from crime ; and it is to be hoped that enough has now been sacrificed to the Moloch—to that idol of our legislators, (the gallows,) to convince them of the non-efficacy of their remedy for this disease in society. If the malefactors themselves are but little affected with the dread of the punishment whilst under its sentence, how can it be supposed their companions at large should regard it ? That it has no effect, as regards altering their disposition to commit crime,

is known to all who have had the opportunities of seeing any number of them under the sentence; it has, however, been the fashion of late years, to make it out, that all who suffer capital punishment, die more or less penitent; sincerely repenting of their sins, and thereby securing for their immortal souls a state of happiness among the blessed in heaven. If this were true, their companions, knowing nothing of the malefactor's state of mind,—of his remorse, and consciousness of guilt, or of his internal feelings, they are in no wise affected by anything said or done within the walls of a cell in Newgate. But in nineteen cases out of twenty, there is no true repentance; most of them die apparently careless about their former course of life, or of the world to come. The last man I conversed with who suffered had been a master butcher at one period of his life, of respectability, but failing in trade, he became connected with some sheep-stealers, who carried on their depredations in the way described under the head of Crimes, Sheep and Cattle Stealing. He was the agent in London, who took them from the drovers to dispose of, after which he and the stealers shared the proceeds. I have selected this case because the man was rather well-informed and somewhat educated, being between forty and fifty years of age. At the time he was awaiting the decision of the council he became very much indisposed, and was removed from the cell-yard to the infirmary, being afflicted with ascites; here almost every day, as I passed, I held some conversation with him on the nature and cause of his complaint, and of the probable result of his fate. On the day when it was known the report would come down from the council, I asked him how he was; he replied, “My health is now of no consequence, as I shall be out of all pain before this day week: I know there is no chance for me.” I said, “If you have throughout been assured of this, I think I never saw a man take it easier.” He answered, “Why, sir, it's of no use fretting one's self about what can't be avoided.” I rejoined,

I am happy to see you so prepared and resigned ; but to be very candid with you, from your jollity and happiness over your pipe and beer, I did not give you credit for so much reflection, or for possessing so much sense of religion." " Ha !" he cried, " that's just what I want to speak to you about. Now, do you think, within your own mind, that we shall ever be conscious of any thing after death ?" I of course used every argument I was master of to convince him of another state of existence. He exclaimed, " What ! you too can gammon as well as the parson : that's what they do ; they take your life away, and then think to make you amends by telling you of another and a better world ; for my part, I am very well satisfied with this, if they would let me stay in it." That same day the order for his execution came down, and he was removed into the cells, from whence, in a few days afterwards, he was led to the fatal drop, preserving the same coolness of manner as on the day I held the above colloquy with him, on futurity and the immortality of the soul. However the facts themselves may be lamented, it is of importance that the truth should always be told. Death is at all times terrible, but must be more so when it is violent and disgraceful : most who suffer are frightened when it draws near their last hour ; but *fear* is not *penitence*, nor is it *repentance* for their *sins*. The fact is, and it should be generally known to the world, that not one statement in one hundred given to the public, of the conduct and penitence of malefactors who suffer death is founded in fact ; and in this place I may as well explain to the reader how it happens that the world is deceived on this head, and in what manner the public papers are made unconscious instruments in giving circulation to the most abominable falsehoods, on the subject of malefactors and their conduct. Similar causes to those I am about to describe operate in the suppression of truth, and the propagation of falsehoods all over the country ; but I must be understood as confining my remarks to the Old Bailey, and to which I par-

ticularly claim the attention of the secretary of state, as being the only person who can give the necessary orders to remedy the evil. It is very well known that a clergyman of the church of England is appointed by the city authorities to perform the duties as a minister of the gospel, both as regards public service in Newgate, as in giving private spiritual advice to the prisoners, and more particularly to afford consolation to the unhappy men who come under the sentence of death. The gentleman who now fills this office is the Rev. Mr. Cotton, than whom there is not a more fit individual for the situation in the whole body of ministers belonging to our church establishment. With an excellent heart, he possesses a sound judgment; and, above all, is a determined enemy to cant and dissimulation, either in secular or spiritual matters. If this gentleman ever gives the world any statement, on a question appertaining to the responsible and important duties he has to perform, such statements will ever be found characteristic of frankness, and in accordance with a true spirit of Christianity. It is not my wish or intention to make any illiberal remark or invidious allusion to any sect of religion, or party of men; but as the explanation I have undertaken to give, of false statements being made on all executions, unavoidably refers to the conduct of particular individuals, I may myself be charged with sectarianism; such motives, however, I disavow, and which charge I repudiate. When a batch of capitally condemned prisoners are confined in the cells of Newgate, awaiting the decision of his Majesty's council, if there should be one or more on whom it is thought the sentence of the law will be executed, the prison is beset with applications for admittance, by persons who wish to be allowed to administer consolation to the unhappy malefactors: these applications are generally made by dissenting ministers, but many ministers of the orthodox church do occasionally apply for admission. Now, it must be understood that in matters of religion, as well as on other questions, the bench

of aldermen are divided into two parties; one high church, and the other the high evangelics, as they denominate themselves; the zeal of the latter party leads them to persuade themselves that a man cannot, with any reasonable prospect of salvation, go out of this world without imbibing a large portion of their doctrine; this conduct, under other circumstances, might be considered laudable zeal, but here it is not only officiousness, but highly detrimental to the peace of mind of the poor wretches whom they affect to be so anxious to serve, for it frequently happens that members of different churches are introduced into the cells of Newgate by permission of the several aldermen, or in their company, after which they generally claim, and are allowed, free access to the cells (the governor of Newgate for the time being viewing the aldermen as his masters). At all hours of the day these persons are to be found administering spiritual advice to the malefactors. We must have all, in the course of any worldly experience, have observed how, in families, peculiar attachments and prejudices are imbibed in favour of a particular medical attendant, who, by some fortunate cases of cure in the healing art, becomes the only able and skilful doctor in the opinion of those who have recovered under his recipe: so it is with several of the aldermen in matters of religion—only certain divines are competent to show an uninformed man the road to heaven. The consequence is, that frequently after the ordinary has been with a man ordered for execution, preparing his mind for the awful event; that immediately afterwards another minister is admitted, and not unfrequently, whilst the reverend ordinary is in privacy with the malefactor, a knocking at the door is heard to announce the Rev. Mr. —, who is waiting for admittance—so little ceremony does their enthusiasm allow them to use on these occasions. This is, in reality, inflicting an additional punishment to that which the law has already awarded to the man, torturing and dis-



tracting his mind at a time when all should be quietness and undisturbed peace, when

“Incessant doubts and fears the anxious mind possess.”

There is one gentleman who often accompanies the malefactors into the condemned pew when they go to hear their last sermon from the lips of the reverend ordinary. I do not impugn, in matters of divinity, the capabilities of any of the reverend gentlemen who are so zealous on these occasions; I must, however, be allowed to say, that although I applaud their zeal, I condemn decidedly their interference, as being opposed to good and sound judgment, and, in many instances, their motives may fairly be questioned—perhaps it may arise from conceit of their own powers of persuasion—or it may be love of fame; their names are to be blazoned forth to the world as having made such extraordinary impressions on hardened malefactors. Sometimes it is curiosity, or the love of witnessing excitement. Be the motive what it may, the practice is a very bad one, as it only tends to bewilder the wretched men whom they affect to serve. Behold the man in his cell—guilty of a heavy offence—soon to appear before his offended God, “most ignorant of that of which he ought to be most assured,” of another and an eternal state of existence, and the efficacy of a sincere repentance through the merits of a Redeemer. Suppose him to have only a few hours to live, which is generally the case when these obtrusive visits are most frequently made. I ask, is he likely to be convinced of these two important truths, by being baited (if I may be allowed the expression) by different divines, not to mention different doctrines urged in various modes of argument and manner of giving them utterance? *One* person, and only *one*, should be admitted to give religious instruction, and that one should be a gentleman of great experience among criminals, for none other can imagine, much less penetrate,

through the deception always practised by old offenders; it clings about them even to the moment of mounting the scaffold. So powerful is habit, that in spite of themselves they cannot divest themselves of it, even at the very point of death. When it is considered that the hope of salvation is not grounded on a man's faith, but on his sincerity, of what use can young men be (or even old ones having no experience with criminals) professing a diversity of creeds and opinions, as to the best mode of reasoning with a confirmed sinner, about to suffer a violent death? Besides, most of these busy divines are enthusiasts, who are least of all calculated to instruct a dying man, having a load of sin to answer for, how to meet his God face to face; they but too frequently teach them how to deceive themselves. They are better suited to preach in the marketplace, to check sin found in a rampant and active state; there they may kill one bird by shooting with their overcharged long gun at the whole flock; in a condemned cell they will ever be found mischievous. I remember an instance of a dissenting minister in Essex, who was an enthusiast, and who was allowed to attend a culprit to the scaffold, conducting himself in a most extraordinary manner. At the moment the unfortunate man was about to be launched into eternity, the minister turned round to the populace, and vociferated to the people, "Behold a happy man!" pointing to the sufferer; this he repeated several times, with a stentorian voice, adding, "that so sure was he of the malefactor's going to heaven, that he at that moment envied him his situation."

When enormous crimes are committed the public become excited, all are in full expectation of learning the truth, but this satisfaction they are oftentimes deprived of, and sometimes the ends of public justice frustrated in obtaining confessions and disclosures, which might lead to the suppression of crime, by the interference of those whose want of experience in these matters prevents their seeing the ill effects

of 'their own officiousness. From the practice of permitting so many persons to interfere with the duties of the regular chaplain, or ordinary, also arises all the false statements put forth to the public, on the occasion of almost every execution at the Old Bailey. It often happens that after the death of a malefactor different versions of his behaviour, and various accounts of his ~~confessions~~ confessions, are circulated; and I have often seen the gentlemen connected with the Old Bailey the next day smiling at the reports in the daily papers, they being generally so directly opposed to the truth of that which really did or did not transpire on these melancholy occasions. On the memorable cases of Bishop and Williams, the murderers, which drew a much larger number of the volunteer assistant ministers than usual, nothing could exceed the rancour of feeling evinced among the city authorities, and of those who manage the affairs of Newgate, as to whether one had done right, and another had not done wrong; and whether, if such a person had not interfered, a full confession would not have been extracted from these vile men, of all their murders, at a particular juncture between the interval of their condemnation and execution. Among the number of those who made themselves busy on this ever-to-be-remembered case, and who too, perhaps, did the most mischief, was a clerical magistrate, who came from the country on this important occasion, thinking that the experience of a gentleman who had filled the office of chaplain to the prison for seventeen or eighteen years was not equal to the duty then to be performed. The officiousness of this magistrate, together with his want of judgment, so confused the reported accounts of the murderers' confessions, that the subject, a few evenings subsequently to their execution, was mentioned in the House of Commons; and the following day a member went to Newgate to make especial inquiries into the affair, when a great deal of crimination and recrimination took place. Now, if the ordinary had been allowed to take his own undivided

course, all the satisfaction which the public could have had from these atrocious murderers, as to the extent of their crimes, would have been much better secured than by the interference of any other person. Most of the accounts sent to the editors of newspapers, relative to executions, are forwarded by these interlopers at Newgate, or made out by them, and sent through the hands of their particular friends, the aldermen or sheriffs, but seldom or never by the only person truly and thoroughly acquainted with all the facts of the case up to the last hour of execution. This will be best illustrated by stating the conduct of one individual, a Doctor R——, who for a long time endeavoured to make himself popular, by attending all the executions in and about the metropolis. He had free access to Newgate, and generally saw most of the malefactors, particularly those who were ordered for execution. On one occasion, after leaving a man who was to be executed the following morning, he went home and wrote a full account of all the particulars, detailing the conduct and confession of the unhappy man up to the moment of his being executed, making himself an active party, and inserting his own name as being present at the fatal catastrophe. This he sent the next day to the editors of several papers. A respite, however, came down late on the eve of the morning of execution, of which he was not apprised in time the next day to contradict his statements; but one editor heard of it, and sent to the proper quarter for information. This led to a discovery of the reverend doctor's *ruse* for fame, and he was ever afterwards prohibited from entering the prison, unless it should so chance they are constrained to admit him with a mittimus, which he deserves for his *littleness* of mind. In London too, as in the country, many ladies, who are connected with those who have the power, under the authority of holding official situations, to procure admittance into the prisons, engage in the work of preparing men for death. By these ladies many statements

are put forth to the world, of which they are in nowise qualified to judge of the effect on the public, or indeed of their correctness. The account of Corder's case, who was executed, is a striking instance of female hyperbolical florid writing on these occasions: and still more so in that of Cook's case, who was executed at Leicester, for the murder of Mr. Paas; this atrocious murderer, who surpassed all others in want of feeling after the horrid deed was perpetrated, by attempting to destroy the body by fire, was daily visited by certain ladies, who carried him peaches and grapes; when, as they report, he showed signs of repentance. Seeing the great efficacy of luxuriant fruit, one lady presented him with a pineapple, when he became much more penitent, and his repentance complete, if we are to believe the reports written by the ladies alluded to. One man who was ordered for execution, in London, said to his companion, (who had been respited, and was allowed to be with him at his own request,) after being visited by a sheriff's wife, "Don't you think I am gammoning her nicely—by God I think she'll get me respited now." This was told me by his companion after he was no more. All this is highly improper, and should be altered. If the ordinary is not a fit person, and is incompetent to perform the duties of his situation, let his place be supplied by another. The man, however, who supposes the gentleman who now fills the office of ordinary to be inadequate to the situation, must himself be but ill-informed of the eligibility and fitness of a person to perform this important duty.

It will be seen from this statement how difficult it is, even in matters of life and death, to get at the truth; even before the trial of any popular case, these extra-official men may be seen buzzing about, settling the question of guilt or innocence, and then of sentence, among themselves; and *ad calamitatem quilibet rumor valet*; for it has frequently happened that they have destroyed the man they wished to save, by their super-serviceable exertions. When a malefactor is awaiting

execution, the only reparation he can make to society for the injuries he has inflicted on it is to disclose all he knows of crime, and of those engaged in it; by adopting this course he makes every amends then in his power for his sins, as regards this world, and by so doing may become an useful auxiliary in preventing further mischief. This, however, none, of themselves, ever are disposed to do; it becomes, therefore, the paramount duty of the ordinary to begin with breaking down their obstinacy of spirit and hardened self-possession; to unbrace the nerves, which a long course of crime and familiarization with prospective death, have rendered tough and rigid to the last degree: until this object be accomplished, no hope can be entertained of ever bringing them into any comparatively fit state to meet their God. But this is a work of no small difficulty, and for which, not one minister in one thousand is qualified, from ignorance of the kind of hybridous beings with whom they have to compete; a knowledge of whom, no learning, theory, or zeal and piety, can give them. Even manner and carriage of person is important in this undertaking: when the work is commenced there must be no solemnity, no austere gravity; nor must there be the want of it: in truth, words cannot describe the qualifications; they are only to be attained by experience, and the endowment of natural powers of penetration into the recesses of the human mind. Confession *per se* is of some importance to the public, as I have before observed; but the experienced minister will see the propriety of superinducing a sincere and true repentance of soul, by which only can salvation be obtained, taking care that they do not mistake sorrow and grief at leaving a world, in which they have spent a life of riot and profligacy, for repentance. Under all the circumstances in which these men are placed, there cannot in the end be any better test by which their sincerity of repentance can be tried, than by their showing a disposition to lay bare the secrets of their breasts, to unfold their whole course of criminality, and to

detail every minutia, concerning all the robberies in which they have been engaged, and to give every information by which the progress of crime may be arrested. None, however, of themselves are disposed to do this; they all shuffle it off to the last, and then say they have written, or will write it, and leave it behind them. Such documents, when opened, generally contain nothing but an indirect confession of the particular crime for which they were condemned to suffer, to which they frequently superadd reproaches on the prosecutor, or some of the witnesses who appeared against them on their trial. I insert the letter of a man who was recently executed (Thomas Attrell) as a sample.

“ Condemned Cell, Newgate, Monday night, February 11th, 1833.

“ In my present unfortunate situation I am bound, as a duty to my fellow-prisoners, to guard them against the horrors of their wicked ways, particularly to all young men, as sinful habits has brought me to this dreadful end. May they take warning by my unhappy fate, and attend to going to church or chapel, and they will there hear the word of God; and I hope they will not only hear it, but consider it as the salvation of there souls, as the neglecting of agoin to church or chapel has brought me to my late sinful life; but I trust in my heavenly Father for forgiveness for all my sins, for the sake his blessed son Jesus Christ. Pray take warning by me, and try to walk in God’s way, that you may be kept from bad company, is the prayer of poor dying sinner. This advice I give to J—— D——, and all others who get their living by extortion.

“ THOMAS ATTRELL.”

“ To the care of the Rev. Mr. Cotton.”

It appears that at some period during this man’s imprisonment, that he had said there were a large number living by the crime of that kind of extortion of which he was found

guilty. This may be either true or false, (I say false,) but there is no doubt in my mind that the admission was made in the hope of exciting an interest for a discovery, and thereby create for himself a shadow of hope that his life might be spared. As he could not, when he saw there was no hope for him, retract what he had before said, he put off his promised confession to the last day, saying he would write it all down. Will any one say the above is a sincere and open confession of all he knew? If they do, I refer them to other published copies of his letter, in which there is a passage that will satisfy them of the *sincerity of his contrition*, and which is omitted in this, out of respect to the feelings of an innocent and respectable gentleman.

If a malefactor at any time be truly repentant he cannot but be anxious to restore the property he has stolen. It is for this reason that the reverend ordinary so frequently, in the pulpit, reverts to the subject of restitution, when inculcating the necessity of a sincere repentance; and also when instructing them in private never fails to make restitution absolutely, or the disposition to it, when impracticable, the test by which he forms his opinion as to the culprit's real contrition. "If," says he, "your repentance be of a true and genuine kind, it is known to your God, and as the Scripture informs us, you will have the benefit of it; but it is my duty to tell you that you may deceive yourself, and that no man's penitence can avail him unless it be real; and that real sorrow for having injured and robbed our fellow-men is always attended with a desire to make all the restitution then in the power of the offending party;" adding, "do not whisper to yourself, I will be truly penitent if I must be hanged; but if I can escape I care nothing about it." Such, however, is the state of mind in which all regular thieves are whilst under sentence of death; and I hesitate not to affirm in the strongest manner, that even in the worst cases, oftentimes the reverend ordinary would have succeeded



in effecting, under his experienced and steady method of treatment, much restitution of property, and other communications from malefactors, which have been wholly frustrated by those who have intruded themselves and usurped his functions. If we are to believe the saints, the last man who was executed died penitent. He suffered for a robbery committed in Bartlett's Buildings, Holborn. After his condemnation it was more than suspected that much of the property was lying not far from the prison ; and he affected to be desirous to give all the information in his power, yet at the same time he was privately informing his confederates that they need not fear, nothing should come from him but what was already known ; and he kept his word, for on being pressed to make a full and open confession, he said he would write it down on paper. After his execution the paper was examined, and found to contain just so much information as he knew the authorities were themselves in possession of, but no more. In extensive robberies, restitution is of importance to the parties who have perhaps been wholly, or nearly, ruined by their loss ; and it is very certain, that if the offender have the means of making restitution, and does not, that he cannot be said to have died penitent. So that, in whatever point of view we look at the subject, restitution should always be made a *sine qua non* for having credit for sincere repentance. The chances of bringing malefactors into this state of mind, however, are diminished in proportion as the number of religious advisers are admitted over and above the one appointed by the city authorities, and is a subject which calls for immediate investigation.

The truth is, that the treatment of these men, and the erroneous and mistaken manner of conducting the whole proceedings towards them, requires a change altogether ; *and it is for this reason that I in this place dwell so long on the subject ; had any one more competent undertaken the task, I should have been better pleased.* No one, however, except

Mr. Wakefield, has noticed the subject, and his is merely a topographical description of the prison, cells, and condemned pew. When men are sentenced to death, they should be immediately placed in separate and secluded compartments of the prison; one appropriated to each individual malefactor; not in a dark, damp, and miserably cold cell, for this is superadding torture to the sentence of death; besides, if any good is to be obtained, either as to confessions, or preparation for another state, when the mind is hard pressed the animal powers should be supported, and rendered somewhat comfortable, being the case, or tenement, of the mental machine, and through the strength of which it can only perform its office. Those who frame acts of parliament for the regulation of prisons oftentimes take but an unilateral view of the objects most desirable of attainment. Dark places, cold stones, bread and water, &c. &c., are considered punishments of greater terror than death itself. Imbecile and shallow reasoners! Do you suppose wicked men, rioting in the full career of crime, will pause to contemplate these trifling annoyances, and look over the more weighty and serious penalties of the law? If shame, the separation from wife, children, and home, will not deter men from crime, nothing else will: to these restraining motives transportation and death are annexed, but the public robber sets these at defiance. When, therefore, you are about to inflict the severest penalty of the law, why destroy both body and soul? or, rather, why not afford a chance for the salvation of the immortal part of the malefactors? Places might be constructed equally as secure as the cells; possessing the advantages of light and heat, without a chimney, which would be an aperture of insecurity. Here, no human being should be allowed to visit them but the ordinary and keeper, excepting only their friends, for one or two hours out of the twenty-four, under the present usual restrictions, which are excellently arranged. The body being thus in

some measure better accommodated than under the present system, the mind would be left to sustain all the conflict with the conscience, in solitude, interrupted only by the ordinary, who, having the malefactor to himself, would, from time to time, note the changes going on in his conduct and mind, availing himself of every favourable opportunity to press his instructions on his charge. Reasonable comfort in respect of diet should be allowed, but on no account tobacco, which is a narcotic, and with which they often stupify themselves at the last; using it, all through their period of trouble, as an amusement, counteracting the effect so desirable to superinduce mental reflection. My ideas, however, on this subject will be better understood by stating how they are treated under the present system. Suppose, at the close of the session, there are sixteen or seventeen men sentenced to death, which is about, of late years, an average number. These are all placed in one yard at the north end of the prison. Connected with the yard are two large wards, where there are tables, forms, and a fire; here, during the day, they all associate together; at dusk they are removed to cells, which are strong apartments, constructed of stone, facing the yard which is called the press-yard, being the place (it is said) where, formerly, the prisoners who refused to plead to their indictments were placed under a board with weights on it, which were increased, till they assented to forego their obstinacy,—as the French express it, *peine forte et dure*. The cells are in three rows, one above another; they are each eight feet long, and six feet wide, with an aperture through the front wall, which is three feet thick, strongly secured with iron bars, having interstices for air and light, leaving not more spaces than in close wire-work. In these places three or four are confined together from dusk till broad daylight: the furniture consists of a common door rope-mat, of sufficient length for lying on, with one or two horse-rugs for a covering; there is no fire-place, nor furniture of any kind,

except an iron candlestick. The floor, roof, and walls, are all of stone. The access to these miserable cold places is through a dark staircase, having communication with passages which run at the back of each row of cells; massive doors are placed, not only at each cell, but in various other divisions of the passages, forming altogether an entire mass of cold iron and stone, impervious to the radiating influence of the sun. This is bad enough in a winter's night; and is, indeed, a punishment quite unnecessary, for mere personal security could be equally ensured in warmer places of confinement. All men fall in flesh (as well they may) in undergoing this probation to the place of execution or a respite.

During the day, however, they are comfortable enough; they are allowed what they like to eat, provided they can pay for it, and it be ready dressed; smoking tobacco and drinking porter is their chief amusement. In this manner is the time spent, whilst awaiting the Recorder's report. There is no thought of any preparation for death: some portion of the day is consumed in seeing their friends, which they can only do through a double row of iron rails, leaving a space of about four feet between them, and between which is a keeper. Some of their time, too, is taken up by visitors, who are admitted into the wards where they sit; these are mere visits of curiosity, that the parties may go home and say, they have seen the prisoners under sentence of death, in the condemned cells of Newgate. The rest of the day is spent in jollity, and efforts to assist each other in driving away melancholy thoughts, or in playing at fives against the wall in the yard. When the report comes down from the council, and any are left for execution, those who are respited are removed into another part of the prison, called the transport-yard, preparatory to their being sent to the hulks. They are all apprised of the day the report is expected, and it may be conceived a day of terrible suspense. In the late reign of George IV., when the king resided at Windsor, it seldom reached the

prison before twelve or one o'clock at night, when the ordinary, Recorder's clerk, and the sheriff, or some other persons, proceeded to each cell, one by one, and announced to the inmates of it their fate. Strange to say, the majority of them think (or affect to think) very lightly of their situation. On a recent occasion, one man only, out of a number under sentence of death, was left for execution. When he was informed, whilst lying in his cell late at night, that he must prepare for death on a certain day, he, without raising his head, called out, "All's right! Good night! Shut the door!" The space of time generally allowed for preparation for death, is from five to seven days, during which, as before said, every one is busy in showing him attention. All who have the power of introducing their friends bring them to see how a man looks who is going to be hanged; and to ask some questions, the answers to which they may repeat at the next dinner party. What chance, I ask, has the ordinary of composing this man's mind—particularly, when at the same time other ministers interfere? Bacon says, "It is worthy of observing, that there is no passion in the mind of man so weak, but it mates and masters the fear of death; and, therefore, is no such terrible enemy when a man hath so many attendants about him, that can win the combat of him." The effect on the malefactor's mind, in consequence of all this attention, is, that he thinks himself a much more important person than men so situated usually are, and he soon persuades himself that his case is one of general commiseration, and that all the gentlemen, notwithstanding their holding out no hopes to him, will yet interest themselves for him, and obtain a respite. This hope sets him to work to frame answers to all the interrogatories put to him, so as to hide his guilt, and make himself out a most ill-used man. The reverend ordinary, whose duty it is to press on him the immediate necessity of preparation, and to tell him that there is no hope for him but in speedily making his peace with God, is considered

now his greatest enemy, and looked on as one who delights in furthering the death of his fellow-creatures. Thus the valuable time of the malefactor is wholly wasted in encouraging vain hopes of pardon, in receiving visits, and in efforts to keep up a determined carriage to the last day, even on which he flatters himself it may arrive, and therefore he must not confess. This is the state of mind of nine culprits out of ten until the eve of the fatal morning, when, fatigued, weak, and worn out with his efforts, the mind becomes suddenly depressed with disappointment, corresponding to the condition of the body; he then falls into a state of stupor and insensibility, from which it is almost a cruelty to attempt to rouse him, as it is too late now to make any beneficial religious impression on him. The next morning, when brought out of his cell to be pinioned, you behold a man already half dead,—his countenance has fallen, his eyes are fixed, his lips are deadly pale and quivering, whilst his whole aspect, in anticipation of the reality, gives you the personification of death's counterpart. Again he is surrounded and interrogated by aldermen, sheriffs, and a party of their friends, who are always called together for the purpose of witnessing the scene, and enjoying a kind of public breakfast, which is prepared on these occasions at the apartments in the Old Bailey Court-house. The fatal moment arrives,—St. Paul's bell, "that iron-tongued monster," announces the hour of eight, and the procession moves forward through winding passages to the scaffold erected at the outside, which is opposite the door of the cooking-house of the prison, through which they pass to the steps which lead to the platform. As the procession enters the first passage, the ordinary in a loud and distinct voice, commences reading, "I am the resurrection and the life, saith the Lord." A few steps further on, they pass a man, who, with the rope in his hand, is sounding the knell of death on the prison bell: the executioner soon now performs his part, and all is over. I am quite at a loss

to account for the number of respectable persons who consent to be brought to witness these horrible scenes *De gustibus non est disputandum*. Sometimes the affair takes quite another turn, and the malefactor is seized with a frenzy for death, as being the only road to happiness, when he will smile and talk, as if he were the happiest man in existence. This effect is brought on by the operation of great excitement on weak minds, under the spiritual tuition of some of the gentlemen who are allowed admittance to introduce fantastical religions, or rather to set up their own hallucinations in the place of religion. Every one who reads the published accounts of executions all over the country, must have been often shocked at the insults offered to soberness and sound judgment, in religious matters, by the published accounts of the happy condition of mind in which many malefactors are said to die. I have seen some extraordinary cases of this nature, and am prepared to show, that such effects ought not to be allowed to be produced on the minds of malefactors, and that such statements ought to be suppressed; it results from fanatacism, and the men who thus are made happy, are generally those of weakest minds, and loaded with the heaviest guilt. They hold out as long as they can, and when driven to the last, plain truth and wholesome doctrine will not carry them to heaven fast enough; these are the subjects for a fanatical preacher. Their effect on a young man, which I saw, will exemplify the subject. In the year 1829, two young men were executed for committing a forgery for two hundred pounds on Coutts's bank, having used Mr. Hamlet's, the jeweller's name in their attempt to obtain the money. There were three concerned in the forgery, and it was not the first offence by many: the one who presented the check was first apprehended. After his committal, he consulted me on his case, and candidly acknowledging his guilt, expressing his fears that one of the party would impeach the other two. Seeing that there was not the slightest hope of his escape, he

wrote to Mr. Wontner, and informed him that he was ready himself to give every information, regarding all the forgeries the party had committed, provided he might be admitted king's evidence against his confederates: he was, however, too late; one of his associates was before him, having made a confession of all their crimes, and obtained a promise of pardon. It was impossible for any man to exhibit more pusillanimity of conduct than he did before his trial,—he cried and wept, both day and night, for several weeks. After he and his other companion were found guilty, and placed in the cells, his sister sent a dissenting minister to him; and such was the effect this preacher had on his mind, that he became suddenly cheerful, and even gay; this occurred between the interval of his trial and sentence. On the day the prisoners were called up to hear their sentences, I saw him in the dock, and to my utter astonishment he was laughing, and encouraging his fellow-prisoners to hold up their heads, telling them they were the luckiest of mortals. I spoke to him through the bars, and congratulated him on his prospects of a mitigation, conceiving nothing but an assurance of this nature could have so altered his demeanour. With the most animated countenance, he exclaimed, "Lord love your simple soul, why I would not exchange situations with you or any man; I never knew what happiness was before." In this frame of mind he lived till the executioner solved the problem for him, whether his notions of happiness were founded on fanaticism or realities. Be this as it may, will any man, possessing true and rational ideas of the Christian religion, attempt to justify this mode of teaching malefactors to prepare for eternity? The impressions on men, and their susceptibilities, are infinitely diversified; some go through the ordeal of a change from life to death in a manner differing from both the former characters: men, who appear insensible to, and know not fear, either as to pain of the body, or of that which terminates it—death: men, like the assassin on



the wheel, who said to his fellow-sufferer when groaning with agony, "Did<sup>d</sup> you not know we were liable to one disorder more than another?" In the condemned cells, and even on the platform at the Old Bailey, some very extraordinary instances of coolness and resolution are occasionally exhibited, which are but seldom made public; men who conduct themselves with indifference as to death being only reported to the world, as hardened, ignorant, and brutal wretches: this is policy; the public must not be taught that any can brave a violent and ignominious death. Ignorant indeed they may well be termed, as far as regards a true knowledge of God; but, in other matters of information, they are generally better informed than those who usually come under the awful sentence of death. Men, who (in their own language) dare to think for themselves, and who, seeing death a "necessary evil," find nerve enough to look him steadfastly in the face. I have known some of them carry their self-possession so far as to turn round on those who offered them advice, catechising and accusing their attendants of being much greater sinners before God than themselves, although not so in law. One malefactor, whilst under exhortation, and in the act of being pinioned, said, "Look to your own sins, gentlemen; you have all enough to answer for," addressing himself to those around him; "mine are not heavier than your own, and if they should be found so, neither of you will answer for them." In this temper and feeling he coolly walked to the scaffold, and there suffered the last penalty of the law. If there be any object in studying human nature, why are not the full and true particulars of every case recorded and published?—there is much yet to be learnt regarding man—of human actions, motives, and influences. I cannot resist giving publicity to the case of a man who to all appearance died an atheist, the particulars of which I got from one who was with him in the cells of Newgate, under the same sentence, but subsequently respited. His offence was coining, and that of my informant

uttering. When the former was brought into the cells, seeing his old acquaintance and customer, with a melancholy countenance, in the same predicament, he exclaimed, shaking him by the hand, "Cheer up, man ! they won't hang you—I'm the man they want ; and as you have often heard me talk of the folly of fearing death, you shall see how I will enact the part assigned me." It would appear from the history of this man, that he had in a manner made his creed auxiliary to his trade. He was a man gifted, in his way, with some command of words, and it was his custom to spend his evenings at a public house, where atheistical questions were propounded and discussed every night ; at this place he met his customers, and under the cover of cramp terms took their orders, all of whom would receive a present of the copy of some author on atheism. The doctrine of non-responsibility to a superior power he no doubt conceived would quiet the consciences of those who, by his trade, he encouraged in crime. Whilst in the cells, and awaiting a certain death, (it being a time when no principals in the offence were pardoned,) he incessantly laboured to bring all the malefactors into his way of thinking. At length the day for his execution was appointed : he received the information without emotion. On the evening of the day he was to die, as he took leave of his companions, he said, "that he was still firm, but had some doubts about the results of the night," saying, "he hoped he should not make a fool of himself for want of animal strength." At half-past six o'clock the following morning he came out of his cell, and seeing his old friend, he ran up to him, saying, "It's all right, no man can be better ; let me see," rubbing his hands with self-satisfaction, "how shall I employ the next hour and a half ? for I will not be bothered with those people," meaning the minister, sheriffs, &c. "O ! I shall wash myself, and get my breakfast ; I will then employ myself in writing up to the last moment, and that will get rid of them." I must add, that still, as if in doubt of his firmness at the pinioning,

he agreed to give his companion a signal of his being in the same mind to the last moment, by looking up to a certain point on the ceiling in the room. This signal he gave, and departed. I have been induced to give this case, in the hope that it will convince those who oppose blasphemous prosecutions, of the necessity there is for their suppression. "The history of mankind is an immense sea of errors, in which a few obscure truths are here and there observed to float." If this man had lived, who shall say he may not have repented? it is evident he was not in a fit state to die; the law, therefore, may have condemned both *soul* and *body*. What a tremendous responsibility do mortal rulers, through their weakness, take on themselves! I have no doubt on my mind, but the man alluded to in the last case, whose whole life was a tissue of crime, so familiarized himself with the idea of death, that he gradually became indifferent to it; had he had in apprehension a protracted punishment in chains and continual labour, it is probable he would have been more appalled, and have never thought of schooling his mind to atheism, if he had not altogether been deterred from his course of life. I think that that great desideratum in our laws, viz. the abrogation of the punishment of death, for all crime except murder, would have been much nearer attainment, if the indifference with which many men endure the prospect of death were faithfully reported to the public. The aphorism, that truth lies in a well, should be altered—it lies in Newgate, where it is barred up, and from whence there is no extracting it: every officer in the place is drilled to prevent its escape, and the heaviest offence a subaltern in the prison can be guilty of, is to name without any occurrence which transpires within the walls of this gloomy edifice; any violation of this regulation is punished with an immediate discharge. There may be good and sufficient reasons for this secrecy, but I have never been able to divine their utility, being of an opinion that every publicity should be given to

the affairs of all establishments, in which the interest of the community is concerned. I should weary my readers were I to enumerate all the cases within my knowledge, of the manner in which men under sentence of death conduct themselves, many of which are peculiarly striking. One man, the day before his execution, would treat his fellow-prisoners who happened to be in the cell-yard at the time, with a dinner, and he ordered a leg of mutton for the entertainment. Of this joint the man so near death ate most voraciously; when he had finished his meal, he said, "As I am to be hanged for sheep stealing, I was determined to have a good feast of mutton for my last dinner." These levities are of frequent occurrence with the low malefactors, but I will close them with relating an instance of what may be termed levity in one of a superior grade in life—Captain M——, who destroyed himself by taking prussic acid a few hours prior to the appointed time for his execution. A day or two before this happened, a gentleman, who took a large interest in his fate, held a conversation with him on the subject of death; the main topic of which was, of the manner many persons had met the grim monster. In this colloquy, a story was told of a Frenchman, who, in the olden times, was broke on the wheel for heresy, or it may be atheism. As the sufferer was undergoing this horrible torture, with the priests around him, he in his agony exclaimed, "O my God!" On which the spectators said, "Ah! you hear he calls on his God at last." The miserable man on the wheel, the instant that this sentence was uttered, collected himself up in the coolest manner, and making a bow with his head, replied, "*Une façon de parler.*" It appeared from the documents found in Captain M.'s cell on the morning when the turnkey went to warn him to prepare for execution, that he had employed the early portion of the night in writing farewell letters to his friends, the last of which was addressed to the gentleman with whom he had the above conversation, regarding the instances recorded of man's

contempt for death. The letter was fraught with grateful acknowledgments of the kindness shown to him, and concludes with, "It is now nearly three o'clock ; all is prepared, and in a few minutes I shall be a dead man. Good bye ! God bless you ! ' *Une façon de parler,*' " meaning to convey, without doubt, to his friend, by the allusion to the Frenchman, that he was equally collected.

## SECTION II.

### *On the Inutility of Capital Punishments, and the Acerbity of the British Laws.*

A man dies, and is forgotten in a month, but the profligate and useless waste of blood which our laws countenance will be held in remembrance for ages to come ; they are justly designated "*sanguinary* ;" taken as a whole, no legislators but those in a state of cynanthropy, could contemplate them without perturbation, and horror of mind. Death is the extremest penalty of the law, but is it good in practice to carry any thing to the extreme ? Even virtue and vice change their natures when they meet at the extremes ; and the crimes of a man about to be executed are no longer remembered : even the culprit himself, under the severity of the sentence, persuades himself "that he is more sinned against than sinning."

"This common courage, which with brutes we share,  
That drives its deadliest efforts to despair."

*Familiare est hominibus omnia sibi ignoscere ;* especially when unjustly treated by those, whose duty it is to measure out the punishment according to the offence. Reverting to the state of mind into which men are brought by the pros-

pect of a violent death, I must be allowed to add another case which had escaped my memory. A young man of good education was ordered for execution; as his case was one which he, nor any other person, ever thought would be visited with the actual execution of that which is but too frequently regarded as a mock-sentence; when it came, it was in the literal sense of the word a death-blow to him. Twenty-four hours, however, before his expected execution, a respite came down for him. As his case excited rather unusual interest, scarcely an hour in the day passed without his undergoing interrogatives relative to his offence, and course of life: those who subjected him to these examinations had in view the humane intention of making out the best possible case they could, to lay before the secretary of state for the home department, who is the real judge in the last decision of life and death. The accounts he gave of his history were every day so different, that all persons were puzzled to account for their disparity, his friends contradicting them as fast as he put them forth. When I saw him after his respite, I questioned him on this subject, and he declared to me, that such was the perturbed state of his feelings, and the confusion of his mind, that although he perfectly recollected the interrogatives, yet he had no recollection of the answers given to them. Now, I ask, as this young man's offence did not, according to the present mode of adjudging death, deserve the punishment, if he had not had friends, who were active in his cause, whether the execution of him would not have been a judicial murder? To dispossess a man of his mind by passing a sentence on him repugnant to human nature, and then ask him to give reasons why it should not be executed, can only be designated *murder*. "Thou shalt not kill," Exod. xx. 13, is a divine law, by which both the ruler and the subject are equally prohibited from taking that life which they cannot give. If, however, hanging men must go on, why will you depress a man's mind to a state of weakness, known only to

those who have undergone the sentence? Why do you also depress the animal frame further, by adopting a system of antiphlogistics? Why place him in a dark and cold cell, upon spare diet, and deprive him of that only principle of volition—animal heat? A man thus treated cannot either employ to advantage his time for the benefit of his soul, or to the arrangement of the few affairs he may have to settle of a worldly nature. Your treatment is more suited to one in a high fever, than to one who is already cold with the prospect of that which is colder—death. But I contend there is no authority by which man can be justified in depriving a fellow-creature of life. An American anonymous writer says, alluding to capital punishments, “that it is in direct opposition to the precepts laid down in the Old and New Testament. In the case of Abel’s murder, (Gen. iv. 10,) instead of Cain being instantly punished with *death*, God says, ‘The voice of thy brother’s blood crieth unto me from the ground.’ What infliction was then passed on him? God says, (ver. 12,) ‘When thou tillest the ground, it shall not yield unto thee her strength. A fugitive and a vagabond shalt thou be in the earth.’ This seems more like a sentence of *transportation* than *death*; and be it remembered, that to this former crime he added the heinous sin of lying; for when the Lord said to him, ‘Where is Abel thy brother?’ he replied, ‘I know not; am I my brother’s keeper?’ It was a very fortunate circumstance for Cain, that he did not fall into the hands of men, ‘whose tender mercies are cruelty.’ In the hands of God, Cain’s aggravated murder was punished with hard labour and banishment. And Cain thought this too severe, saying unto the Lord, ‘My punishment is greater than I can bear.’ And God, under all the circumstances, appears to have had compassion on him. For upon Cain’s saying, ‘It will come to pass that every man who findeth me will slay me,’ God relieved him from this dread, for he set a mark upon him, that no one should slay him; implying that

his vengeance would be upon any, both here and hereafter, who should slay Cain. God says again, ‘To me belongeth vengeance and recompence; I kill, and I make alive.’” The spirit of our laws appears to me to be dictated solely to the object of an infliction of a certain quantum of pain on the body of an offender, equal to the supposed extent of criminality; and this too is very badly provided for. In our enactments against crime, the main object ever seems to have been the carrying severity to the uttermost point of human modern legislation, leaving it at the discretion of the judges to lessen their sanguinary character. This power was never originally contemplated by the laws, and for which there is no necessity. Laws should be defined, especially those which affect a man’s life and liberty. If it be thought exceptions will occur, inconvenient as it may be to provide for them, still it would be preferable to the exercise of power, arbitrary in its nature, and against the abuse of which it is impossible to provide, but by the written provision of *law*. Justice is of slow growth, or rather its effects, but the evils of bad law increase very rapidly. It cannot be that men commit crime for the sake of daring death, yet their numbers increase with the penalty. Another cause must therefore be sought. Is it excitement? Boys say, their first ideas of crime came on while witnessing an execution; this fact, which is indisputable, proves that there is some strange, and hitherto unexplained, compound principle of action in the human species. One effect is sufficiently evident, viz. that it hardens and brutalizes all who witness these scenes, and all who are concerned in carrying the law into effect, which remark is verified in the persons of the judges themselves. When a man consents to take on himself the office of a judge at the Old Bailey, he parts the same day with the best part of those feelings which are considered nature’s ornaments. If I were to insert in this place all my observations in proof of this proposition, I fear that I should be charged with invidious personality; and I



beg to add, that I have distinguished between what is called "*painful duty*," "*firmness of purpose*," &c. &c., and that which was not only careless and unjust, but savage and cruel. I have in the former part of this work alluded to their conduct, and am much surprised that the press remains so long silent on a subject which is every where spoken of by those who have watched the proceedings at the Old Bailey court. Let me break the ice by putting a few questions to those gentlemen who occupy seats in the office at Newgate. Ought a judge to sit on the bench who daily loses his temper? Was not a young lad, aged nineteen years, convicted in October session last, and who is now on board the Cumberland convict ship at Chatham, sentenced to transportation for life at the bar? Did not a gentleman call on them at their office, and remonstrate with them on the extremely cruel sentence, saying, he (the convict) was as innocent as the judge who tried him? and did not one of them say, that he believed he was, but that the judge was in a passion at the acquittal of several prisoners, tried before the young lad in question was brought up, and that he could in no other way account for his conviction, and heavy sentence? I will not waste time in stating the particulars of the case. Enough for me to prove the fact of passion, petulance, irritation, and a spirit of unjust revenge in a judge. I anticipate that these questions, like all others which tend to inculcate men in power, will be answered with a negative. But will they publicly meet the questions? If they will, I am prepared to prove the truth of them to the entire satisfaction of the world. Again; is not one half their time engaged in defending the conduct of the judges at the Old Bailey court—in sittings in judgment on the judges—in defending irritation and injustice? Have they not acknowledged repeatedly that the business is performed in a slovenly and indecent manner? And is there any account kept of how many sentences are made up in the office before the prisoners are put on their trial? Some, I know, have judgment passed

on them even before they are apprehended. *Excuriâ*. Here is one example: a gentleman belonging to a literary institution in the city of London called at the office one morning, and said, (the parties were friends,) "We have been robbed of some books by —— ; you know him ; I shall take him up, and I want him sent across the water." The reply was, "You may depend on its being done if you send him here ; I'll transport him for deceiving you so." These may be considered trifles, but *Inest sua gratia parvis*. There is but one way in which the conduct of the judges at the Old Bailey can be explained. It is this: seeing daily so many confirmed rogues brought before them, and their cases being generally so much alike in their details, that they, soon after taking office, become wearied of so much sameness of prevarication, when they come into court with a resolution to hold an opinion which is directly opposed to the spirit of our law, viz. to consider every man innocent until found guilty by a jury of his country. With this feeling, they consider it a waste of time to enter into any minutiae, but look on the prisoners as convicts at once, brought into court only to have the seal and stamp of felon impressed on them, and a testamur thereof signed by them ; and truly this work goes as regularly as any steam-engine coins penny-pieces. A magistrate has committed, and a grand jury has found a true bill. What justice more will the people desire next ? An opinion of this nature appears to have possessed the judges at the Old Bailey for these last twenty-five years, not heeding the Latin maxim—*Ex facto jus oritur*. There are occasions, however, when the forms of justice are respected in these courts, and when the judges belonging to them assume the character of other grave judicial functionaries. But this happens only when the case has excited great public interest, or a question of law affecting trade is to be determined. On these occasions respectable persons are drawn to the court, and patience of investigation is forced on them,

and for want of which, in all other trials, the court may be likened unto a modern book of surgery—there are a vast number of terrible cases in it. This opinion is general with the few who note the proceedings of these courts. In discussing a case of a man who is presumed to be now suffering imprisonment innocently, with a high city authority, he told me, that he heard the trial, being on the bench beside the judge, who, in his opinion, summed up very unfairly, and that when the jury pronounced a verdict of guilty, the judge turned round, and in a low voice, said to him, “Nine juries out of ten would have acquitted that man;” adding, that the judge showed evident symptoms of delight at having succeeded in obtaining the verdict he laboured for. The man has since proved his innocence to the satisfaction of several gentlemen who have inquired into his case. It is the duty of all men, who take their seat on a bench of justice,—*ex æquo et bono judicare*. And to those who do not, I say, Remember there is another bench, occupied by one who cannot err. Let me not mislead my readers: I impugn not the honesty of their intentions, but I speak of their weaknesses, in which we all in common share; their want of industry and patience to separate the tares from the good seed, and of their *prejudices*, “*the idols of the den*,” which prevent their seeking after the good seed. Lord Bacon, speaking of the reform of the law of England, says, there are “a number of ensnaring laws, which lie upon the subject; and if, in bad times, they should be awakened and put in execution, would grind them to powder. There are some penal laws fit to be retained, but their penalty is too great; and it is even a rule, that any over great penalty, besides the acerbity of it, deadens the execution of the laws. Much is comprised in these few words. The bad times have awakened, in the discretion allowed to the judges, who, like the hangman, becomes every day more hardened in the performance of his degrading duty. As the years increase over their heads, (the judges of the Old

Bailey,) their course has been invariably marked with an increase of acerbity of temper. This is proved by the history and life of every Recorder, who ever sate on the bench at the Old Bailey; and from which principle, inherent in all men, have arisen immense injuries and accumulated mischiefs to society, viz. the uncertainty of punishment, and the contempt in which all men hold our system of jurisprudence. So convinced am I that the manner in which the laws are administered, under the discretion of the judges at the Old Bailey, has been one of the chief causes of the increase of crime, that it is a perpetual source of concern to me, that this subject has not been taken up by some one more able than myself to awaken the attention of the public. I have, however, collected some facts which may attract notice, and merit investigation, until which the giving them a mere denial must be considered as certain mouthfuls of articulated wind blown at them. It is for slaves to lie, and for freemen to speak the truth. I make these remarks, as I know, should any of my statements excite private inquiry, that they will at once be denied by those who think the arcana of the prison-house is unknown to all but themselves. For my own part, my motives are of a public nature, having nothing to hope or fear in giving publicity to these statements; if it were otherwise, I should not withhold them, thinking with Lord Bacon, that, "it is improper to be deterred by fear of self-injury, from contributing to the detection and correction of error." If justice had been administered in all our courts of law, as it has been at the Old Bailey, ere this all the relations of society would have been rent asunder—all the social elements resolved into wild anarchy. It is a sophism to call the laws strong, whilst they are unjust in their operation; every appearance of injustice should be avoided, or men will revolt: *Inest et formicæ bilis, and inde iræ*. The very forms of the court are daily violated. It was only in February session last, that Lady Sandwich was called on to give evidence against her

butler, who had robbed her. She was allowed to give her testimony from the bench, sitting beside the judge. Of course her ladyship gave the same evidence there as she would have done in the box; she could have no motive to do otherwise. It was, however, said by the prisoners and several persons, that her ladyship earwigged the judge. This shows the impolicy of departing from established rules. Polite accommodation might be given to rank, without, in the face of the world, constantly placing the prosecutors in juxtaposition with the judge. Under the present system of administering the law at the Old Bailey, if a man were to ask my advice under a charge of stealing the Monument, I should say, "If you can escape out of the country, do so; even the charge of an offence, impossible in itself, will not protect you."

Turning, again, to the severity of the laws themselves, it is a melancholy subject of reflection, that no arguments have hitherto been effective in disabusing the minds of our rulers, that sanguinary laws are useless, acerbity being the *chef-d'œuvre* of all English penal legislation, (if we except the recent repeal of capital punishment in certain cases of forgery,) acting on the unchristian principle of revenge and vengeance. Prevention, which should be the great object of all law-givers, is wholly abandoned, unless the new police force may be considered such. It is, however, evident that it is not, or how is it that there is still an increasing criminal population? The police may, in a small measure, multiply the chances of apprehension, when the offence is committed: this effect is, however, much over-rated. Revenge is the foundation-stone on which all our statutes are built. Paley defines resentment to be, "Anger and revenge—anger is the feeling of pain of which we are susceptible when injured or offended; revenge, the subjecting the offender to the greatest pain we have it in our power to inflict." Human nature is subject to violent paroxysms of passion, which pervert the judgment; no man, therefore, is fitted to preside in his own

case of injury. The laws have wisely ordered, that others should judge between man and man ; but in cases of criminal offences, which are viewed as acts against the state, specific laws are enacted for particular crimes, and it would seem, from the sanguinary nature of the English laws, that those who framed them were alone the injured parties. And I am not without suspicion, that the acerbity of the laws are occasioned by the wealthy allowing themselves to be influenced by some such feelings. The enormous bulk of our penal statute books has been caused by an accumulation of particular statutes against particular crimes, supposed to affect particular parties. Meredith, speaking of a bill which was passed to punish with death, stealing in a shop, or lifting any thing off a counter with intent to steal, relates a case which is too remarkable for me to omit. He says, “ Under this act, one Mary Jones was executed, whose case I shall just mention ; it was at the time when press-warrants were issued, on the alarm about Falkland Islands. The woman’s husband was pressed, their goods seized for some debt of his, and she, with two small children, turned into the streets a-begging. ’Tis a circumstance not to be forgotten, that she was very young, (under nineteen,) and most remarkably handsome. She went to a linen-draper’s shop; took some coarse linen off the counter, and slipped it under her cloak ; the shopman saw her, and she laid it down : for this she was hanged. Her defence was, (I have the trial in my pocket,) ‘ that she had lived in credit, and wanted for nothing, till a press-gang came and stole her husband from her ; but since then she had no bed to lie on ; nothing to give her children to eat, and they were almost naked ; and perhaps she might have done something wrong, for she hardly knew what she did.’ The parish officers testified the truth of this story, but there had been a good deal of shop-lifting about Ludgate—an example was thought necessary—and this woman was hanged for the comfort and satisfaction of some shopkeepers about Ludgate-

street. When brought to receive sentence, she behaved in such a frantic manner, as proved her mind to be in a distracted and desponding state; and the child was sucking at her breast when she went to Tyburn. Let us reflect on this woman's fate. The poet says, 'An honest man is the noblest work of God.' He might have said, with equal truth, that a beautiful woman is the noblest work of God. But for what cause was God's creation robbed of this its noblest work? It was for no injury; but for a mere attempt to clothe two naked children by unlawful means. Compare this with what the state did, and what the law did. The state bereaved the woman of her husband, and the children of a father, who was all their support; the law deprived the woman of her life, and the children of their remaining parent, exposing them to every danger, insult, and merciless treatment, that destitute and helpless orphans suffer. Take all the circumstances together, I do not believe that a fouler murder was ever committed against law, than the murder of this woman by law. Some who hear me are perhaps blaming the judges, the jury, the hangman; but neither judge, jury, nor hangman, are to blame; they are ministerial agents; the true hangman is the member of parliament; he who frames the bloody law is answerable for the blood which is shed under it. But there is a further consideration. Dying as these unhappy wretches often do, who knows what their future lot may be! Perhaps my honourable friend who moves this bill has not yet considered himself in the light of an executioner; no man has more humanity, no man a stronger sense of religion, than himself; and I verily believe that at this moment he wishes as little success to hanging as I do. His nature must recoil at making himself the cause, not only of shedding blood, but perhaps *destroying the soul of his fellow-creatures*. But the wretches who die are not the only sufferers; there are more and greater objects of compassion still; I mean the surviving relations and friends. Who

knows how many innocent children we may be dooming to ignominy and wretchedness? Who knows how many widows' hearts we may break with grief?—how many grey hairs of parents we may bring with sorrow to the grave?" The same speaker said, that, "When the great Alfred came to the throne, he found the kingdom overrun with robbers; but the silly expedient of hanging never came into his head: he instituted a police, which was, to make every township answerable for the felonies committed in it. Thus property became the guardian of property; and all robbery was so effectually stopped, that," the historian tells us, "in a very short time a man might travel through the kingdom unarmed, with his purse in his hand."

Our members of parliament being necessarily returned from the wealthier classes, and coming to their seats with the feelings just alluded to, they always find themselves in a temper of mind to give assent to any new penal law, however barbarous, so that it affect not the rich man. In the same spirit were the game laws modelled, and which have been the cause of nearly all provincial crime. This tenderness of the magistracy, where their own interests are concerned, is strikingly exemplified in the following paragraph, copied from the "Liverpool Times." "In consequence of the appearance of the cholera in Wakefield House of Correction, about ninety prisoners, sentenced to various terms of imprisonment, have been discharged. The magistrates, however, kept all the offenders against the game laws in prison, whilst they set at liberty the thieves, poaching being the unpardonable sin of the country gentlemen." Is this dealing out justice fairly? and how can it be expected that men will respect either the law or the magistracy, under such ultra-legal proceedings? proving that the discretion countenanced by our system is constantly exercised for private and individual purposes, regardless of public and general good to mankind at large. These are the causes of disgraced humanity, and a degraded



people, being revolting to all consistent notions of justice. We pique ourselves on being an enlightened and highly civilized race; posterity will not find proofs of this in the history of our laws, which tend only to brutalize the minds of the people. All good and wise men have denounced them, and so have the people, as doing nothing in the repression of crime. The punishment of death in particular, and other severities, have been protracted through a period too long for the patient endurance of afflicted humanity. Hear the opinion of Doctor Forde, communicated in a letter to Mr. Bentham; the writer was, at the period referred to, ordinary of Newgate, and allowed by all persons to have been a very sensible and experienced gentleman.

“SIR;—My opinion on the efficacy of executions can be but of little service to one, who has, perhaps, studied such matters for a considerable length of time, for the purpose of endeavouring at a reformation in them; whereas, I have viewed them as they occurred in the course of my professional attendance, without expecting that my opinion was ever likely to be inquired into, much less followed. From every thing I have witnessed on these melancholy occasions, I am decidedly clear, that executions, managed as they are at present, answer no end whatsoever, either for punishment or example. By executions the intention of punishment is defeated; which is, first, to make restoration, or recompence, to the injured party; secondly, to warn others; or, thirdly, to amend the morals of the criminal. If I am plundered, first, the death of the plunderer may gratify my resentment, but it cannot restore my property; for the law gives the property found upon the criminal, not to him who has lost it, but to the king. Whenever I can find that the numbers in the Newgate Calender are decreased regularly, till at length the court at the Old Bailey is no longer of use—then, and not till then, I shall acknowledge, secondly, the utility of executions for in-

timidating would-be rogues. With respect to the third point, (amendment of morals,) the rope puts a stop to every thing of that sort at once. But you may wish to learn the effect which sentence of death has on the convict, in punishing his misdeeds, or causing him to set about the necessary work of repentance. From the moment he quits the court, every engine is set to work, both by him and his friends, to obtain a respite. During these exertions, vain and futile are all the attempts of the ordinary, &c. to prevail on him to reflect on his awful situation, with respect to both worlds. The flattering hopes within his own breast are puffed up by his friends into a certainty of saving his life; and till the very moment in which the unexpected warrant for execution arrives, death is the farthest thing from his thoughts. What is to be done now? Are a few days sufficient to make his peace with God? O no! All is now hurry, confusion, and despair. Is this a time to instruct him in religion? Alas! he does not perhaps know the meaning of the word; nor does he conceive any benefit whatever to arise from the use of the name of God, or a Saviour, except that of filling up his common conversation by explanatory blasphemy. To divert him now from any serious thoughts, he is daily visited by his *supposed* friends, relations, or colleagues, who (some with good motives, and some with bad,) are urging him to die like a man; and in order to assist him in keeping up his spirits, each visitor brings a little something for a parting glass, which frequently terminates in the intoxication of the unfortunate sufferer, and precludes even the shadow of repentance, or contrition. Here you will be likely to attach blame to the prison-keepers for suffering liquors to be brought in; but what can they do? Women, who are chiefly the conveyers of them, conceal them in such ways as would be termed the grossest insult to search for. Besides, common humanity says, why add torture to torture, by 'keeping from him the consolation of his relatives?'

&c. The result of all this, (I speak generally,) is stupidity at the hours of morning—devotions, enthusiasm, rhodomontade, and fruitless threats of revenge against his prosecutor, in the evening. At length the long-dreaded morning arrives; he knows he must quit this world, and he may as well do so with a good grace as not. ‘What would his old associates say, if they were to behold him die soft?’ (as their phrase is.) ‘His memory would be despised, and had in abomination.’ He mounts the drop, resolute in appearance, however he may be within—bows to the spectators—shakes hands with the ordinary, and such others as may be with him travelling the same journey, and (according to the expression in the dying speech, which at this moment is publishing in all parts of London,) ‘is launched into eternity.’ This man is not punished, nor are his compeers intimidated. It is like the acting of a tragedy: a momentary tear of pity may be shed, but the next ribaldry obliterates the whole of the foregoing catastrophe. For argument-sake, we will suppose the convict a true penitent, and resigned to his fate, with a full trust in, or even a modest hope of, salvation. The spectators are ignorant of what is passing in his mind, but they see him resigned in his countenance; consequently, they are not intimidated by his example. We will suppose, again, that some real contrition may arise in the breasts of some few who are under sentence; and that they may deceive me as well as themselves. Let a respite come to these people, who had given such good hopes of reformation, and what is the consequence? I do not, at this moment, recollect one who did not, almost immediately, forget all his resolutions. Nay, I will take upon me to say, that some of the most wicked prisoners who are now in Newgate, have been under sentence of death. One instance let me mention, of a man who was in that predicament, and who gave every hope of reformation. It was an arduous matter to get him respited; but it was done. He was removed from the cells, and his

punishment mitigated to transportation. Meeting me a few days afterwards, he said, ‘Here are the books you so kindly lent me; and having no further use for them, I return them with many thanks.’ But I ask, ‘why execute at all?’ Who shall say that the most hardened villain may not repent? Youth, health, ignorance, and bad companions, &c., may lead a man to perpetrate the greatest crimes. The time, however, may come, when he looks back with horror on his past transgressions, and repent in dust and ashes. Execute him, and think of his hope of salvation! Why not leave him to God and his own conscience? Time, confinement, mortification, &c. may restore him, and cause joy in heaven; regular labour—the sweets arising from industry—the want of bad company, &c. all combine to recover the lost sheep; and ‘the last state of that man is better than the first.’ Who is he now, that can take upon him to determine, that it would have been better to put that man out of the world? I say it is arrogating an authority which no frail mortal has a right to do. Some persons (who think they abound with the milk of human kindness) will say, ‘I would punish no criminals with *death*, except they had committed murder, but that blood requires blood.’ ‘Whoso sheddeth man’s blood,’ &c. (Gen. ix. 6.) This, however, was not used by the Almighty on a particular call, but as a desultory threatening.” He concludes: “I have often reflected, and as often wondered, with what a small degree of devotion, or right frame of mind, certain persons have joined in the second prayer in our church, ‘Almighty God, who desirest not the death of a sinner, but rather that he may turn from his wickedness and live.’ Strange it is, that our religion is so mild, and our *laws* so sanguinary! Instead of sparing the life of a criminal, in order that he may turn from his wickedness, and try to live for ever, our criminal code nips him in the first bud of his sin, cutting off all hope of reformation, and destroying the possibility of atonement to

the injured party. I hear some one say, ‘What is to be done, then, with criminals? Would you execute none?’ *None*: square the punishment to the several degrees of transgression, and plead the mild laws of God in your favour.

“B. FORDE.”

Here, then, is the opinion of an ordinary of Newgate, written just half a century ago, on the effects of executions. If the present ordinary were applied to for his sentiments, there can be but little doubt that his answer would accord with that of his predecessors; after which, where shall we look for opinions of greater weight? Gentlemen, too, if it were possible to suppose for a moment, could prostitute their opinions to interest, would find motives to uphold the present system of severity, which is thought to increase delinquency, as the heavier the clerical duty in prisons become, it is reasonable to suppose the greater will be the stipends allowed for the performance of it. Now, if we take a retrospective view of crime in London and Middlesex, since Doctor Forde wrote the above letter, we shall see that the judgment he exercised fifty years ago has been proved to be a correct one by subsequent experience. At the time he wrote the letter, in 1783, the average number of prisoners tried each session at the Old Bailey was under one hundred. In 1808, we find him writing again, and declaring that “executions are of no avail, either for punishing criminals or intimidating others from the perpetration of crimes. At this period the Old Bailey session, in September, commenced with a calender of nearly one hundred and eighty prisoners, and at the present time the average number is very nearly four hundred. So much for executions and severity; and unless the blindness and fatuity of those who have the power of amending the laws be overcome by the united good sense of the people, the next fifty years will exhibit the same fatal results of increasing crime. I do not mean to hold out that hanging alone is the

cause of an increased number of criminals in the country ; I, however, will maintain, that it is useless as a deterring power, and that the punishment of death, together with the general tenor of the cruelty of our laws, tend to perfect the brutalization of that class of society who are engaged in crime ; and also all those who, from their want of education and position in life, are the most liable to fall into it. Burke, on the Sublime, sect. 15, says, “ Choose a day on which to represent the most sublime and affecting tragedy we have ; appoint the most favourite actors ; spare no cost upon the scenes and decorations ; unite the greatest efforts of poetry, painting, and music ; and when you have collected your audience, just at the moment when their minds are erect with expectation, let it be reported that a state criminal, of high rank, is on the point of being executed in the adjoining square ; in a moment the emptiness of the theatre would demonstrate the comparative weakness of the imitative arts, and proclaim the triumph of the real sympathy.” It is then asked, may not some tendency for cruel laws originate in a love of excitement, and particularly of that excitement which shares the distress of others, which says—It is a view of delight to stand or walk upon the shore-side and to see a ship tossed with tempest upon the sea ; or to be in a fortified tower, and to see two battles joined upon a plain ! The recklessness of legislators in framing penal laws, arises from the fear of being injured prevailing over the intention of injuring others ; and, perhaps, the love of power tending to excite a love of coercion, paramount to a respect for conciliatory government. My ideas on the terror of death not being effectual in preventing crime are completely established, and their correctness proved beyond dispute, as far as an individual case will do so, by a recent occurrence. Under the head of “ The Pardon Power,” I particularly noticed the case of one John Cronie, p. 136, who was sentenced to death for stabbing John Fuller, a policeman : the atrocious assassin followed his victim a whole day,

and at length inflicted on him several stabs in the epigastric regions of the body, one of which penetrated the lungs. This desperate man, who himself said, the whole time he was in Newgate under sentence of death, that he expected to be executed, by one of those extraordinary events which have ever marked the acts of the pardon power, as now managed, was, under the order of the secretary of state for the home department, sent to the house of correction for six months, and then discharged. During his imprisonment the policeman so far recovered as to resume his duty, although in a very weak state of health. Early in the beginning of the present year, 1833, as he was patrolling the street on duty, he again observed the ruffian Cronie behind him; the policeman (Fuller) turned round and coolly said, "Cronie! I am not sorry for your escape; but as I shall carry the effects of your last attack with me to the grave, I hope you do not intend me any further injury?" The villain replied, "By God I do, and will have your life." The policeman procured assistance and secured the monster, who is now in safe custody, for want of bail to keep the peace. Although there is no doubt that his intention was to effect the murder of Fuller, yet, as the last charge was only a threat, not a deed, the fiend can be but held to bail to keep the peace, and it is to be hoped no persons will be found hardy enough to become his sureties. Thus we see the fear of death (and he was within a hair's breadth of it, little more than fourteen months since) has not improved this man's feelings or nature, or made him fear it less. This case, with some others, should be inscribed on marble and hung up in both houses of parliament—in the king's council chamber, and in all the courts of law in the kingdom. This was a case for punishment, but not for death—the monster fears it not, but rather courts it; thousands are like him as to carelessness of death, though it is to be hoped not so blood-thirsty. All men engaged in violating the law of property, contemplate death as an agreeable alternative, when

snatched from their licentious courses. It is true they, in schooling their minds to this train of thinking, deceive themselves, for when the day of execution comes they are informed of their mistake; but then it is too late, and their companions knowing nothing of their conviction of former errors, are not affected by them, nor never will be, but by the same course of resipiscence.\* It is at all times painful to contemplate the brutal nature of man in a state of dark ignorance, but the mind is still more shocked when men of education, being in power, cast aside all the restraints of civilized humanity, and act like savages.

In the House of Commons, March 5th, a case was mentioned of a member who was tried by a court martial in Ireland, and sentenced to death. It was known to those in whose hands the power of putting the sentence into execution was vested, that the friends of the unfortunate gentlemen had hastened to London to solicit for a pardon; the parties, therefore, who desired his death, cause him to be shot at night by torch light; had they waited till the following morning he would have been saved, as his son arrived bearing a free pardon for the father. This reminds me of a case which occurred in Guernsey some years since. A man in that island was sentenced to death (it was said unjustly). His friends hastened to town to lay the case before the king and council. It appeared that the man under sentence had made himself obnoxious to the leading men in the island: to prevent, therefore, the man having the benefit of the anticipated remission of sentence, although from time immemorial executions had always been carried into effect on a Friday, the authorities ordered the man in question to be executed on the Thursday, on which day a pardon did actually arrive, but too late to save his life. These cases prove the nature of man, and how

\* Lord Bacon asks—"Is not the frequency of suicide, and the occasional instances of mothers destroying their bastard children, some evidence that there are passions more powerful than the fear of death?"



unfit he is, whatever may be his rank or station, to be armed with a power which belongs to the Almighty only—that of dispensing life and death to his fellow-man. Few arguments more can be urged for the abolition of the punishment of death, which have not been used by previous writers possessing correct notions of the influences over mankind, and of the cause of humanity. It may, however, be asked, what motives ought to actuate the legislator, who is a real friend of his species, in making laws? The answer is plainly this; the suppression of crime and the promotion of virtue. To those who still pertinaciously advocate the cause of death and vengeance, I say, if it can be shown that severe punishments, death especially, have not operated as a preventive, but rather promoted crime, then all the arguments of those who advocate their continuance, are answered, and their reasonings confounded. To prove the truth of this proposition, I refer to the evidence and opinions of all men who have been best acquainted on the subject; also, to the tables published annually, of increasing delinquency; and, further, to the incontrovertible fact, that in the memorable era of the one-pound note prosecutions, the faster they hung up their victims the more rapidly men came to sacrifice themselves to the gallows, until the voice of their blood crying from the ground began to alarm even those employed in the work of slaughtering their fellow-creatures: hence the invention of minor pleadings, to lessen these horrible scenes of national disgrace. The great drawback to legislative improvement in this country is, that all proposed alterations or amendments in our laws are ascribed to party motives; the members of the state look not so much to measures as the men who propose them. They seek for motives, and support or oppugn, not on the utility or broad merits of the question, but as they imagine the measure may affect one party in politics or society more than another. Theirs is not a humane policy, and they are unassailable through any argument than that of interest, which the more

excites astonishment that they should not see how much they are endangering property in general, by breeding up in the midst of our metropolitan population a race of ferocious reckless men, morally speaking, a kind of hybrid of the human species, who are insensible to all restraints, human and divine : the greater the danger from which they have escaped the more certain are they to return to crime. Two men who had been under sentence of death, were some time since pardoned and discharged, after suffering from five to six years' imprisonment in Newgate ; in a few months subsequently they were brought back and transported for the commission of heavy offences. One of them, only a few weeks after receiving his pardon, went to the very gates of Newgate and waited for an old man who had been detained in the prison as a lunatic, whom he knew was to be discharged on a certain day. Knowing that the man had a watch and money in his possession, he succeeded in inveigling him to a public house, where, after dosing him with drink infused with drugs, he robbed him. A prudent legislator will foresee the folly of rendering the laws terrible ; cruelty always borders on tyranny. The crime of murder is frightfully on the increase in this country, and every day discloses some hitherto unknown horrible motive for its commission ; and it is past dispute that the English character is becoming more savage and brutal. Irreligion and the prevalence of drunkenness and immorality are assigned as the cause of this effect. The true cause, however, is to be found only in the acerbity of our laws, and the disposition evinced in every act of the legislature to coerce, and bear imperiously an iron hand over the people ; to view all offences as inexpiable. Every man who mixes much in the world, and carries an observatory eye, knows that the mass of the poor are possessed of a rankling spirit of revenge, brought on not so much by their poverty, as the multiplicity and severity of the enactments passed to put them down, and to rule them by fear, without hope ; setting nothing before their eyes but

judges, menaces, and chastisement. Simple breaches of the police are confounded with the most flagrant violations of the law. The excess of fury in framing the laws have driven the subjects into the excess of fury in resisting them ; moderate legislation begets respect for the laws and moderation of conduct. Laws which are contrary to nature cannot be justified by local habits or crimes, because nature is every where the same, and consistent in all she does ; our laws are unjust in apportioning penalties of a greater magnitude than the laws of society, or those of nature, demand, and therefore she revolts against them.

### SECTION III.

#### *The Punishment of one Crime creating others.*

IN a few short months one execution and several murders have, it is supposed, been committed, arising out of the penalty of death being annexed to a nameless offence. It would be a difficult matter to assign any good reason why this statute should any longer be allowed to remain on our books. It is an important maxim that all laws are made for the prevention of crime ; what, therefore, shall be said for a law which not only promotes the crime which it professes to repress, but is the creation of several other crimes of enormity ? The laws of God, nature, and man, denounce and proscribe this offence ; were it possible to remove this blot and stain from humanity, every man would have occasion to rejoice at the human species being redeemed from so monstrous a disgrace, and feel himself exalted. As, however, its nature is secrecy, there remains no hope that any law can efficiently punish, or indeed discover, the offenders ; and it is a melancholy reflection, that under the penalties attached to this crime,

more innocent than guilty persons have suffered. Wicked men, aware of the prejudice an accused person has to compete with in defending himself, make the accusation for purposes of extortion, and not unfrequently to gratify malignity and revengeful feelings. The evil of legislation on this crime, however, is, that it gives publicity to a weakness of nature, and early awakens the mind to ideas, particularly in youth, the mischievous effects of which are beyond all calculation. It must be admitted to be an embarrassing subject to treat on, and men in general have naturally a repugnance to dwell for a moment on the horrible subject. God forbid that any one should wish to diminish the horror attached to this revolting vice; but any attempt to lessen the pernicious knowledge of the existence of such a vice is not only pardonable, but becomes a duty. My view of the question is, that all penalties against the crime should be withdrawn, except those which give the magistrate power to punish for an "*Assault with intent*," &c.; and that no other words should on any occasion be used in print when reporting law proceedings, or in speaking in any way of the offence. All laws must be bad, which in their execution tend to injure society; and which occasions a manifold commission of the crime it professes to repress in the punishment of one offender; a law too which the judge (in the case to which I allude) and all the subordinates of the executive are ashamed to fully carry into effect, as they almost invariably decline to examine into the capital part of the charge, contenting themselves with awarding a short imprisonment for the "*assault*," &c., and exposing the parties to the detestation of the world, which, from the nature of the offence, is in reality the severest of all punishments. If it should be thought that this mode of treating the crime might seem like attaching a less horror to it than it deserves, I submit whether it would not be a wise measure to enact a law, that all who committed this offence, and that of violation on an infant, together with the

crime of bestiality, should, on the fact being proved, be declared, under the law, in a state of insanity, and deemed unfit ever afterwards to be at large, as endangering the good order and safety of society. By placing the criminal in this situation, the law would then inflict the severest of all punishments, namely, imprisonment for life: a place for their incarceration should be provided, having separate cells, in which the discipline should be severe profitable labour, and they should in every way be treated as criminals undergoing an expiatory course of punishment. The press would then, without doubt, see the propriety of suppressing all the disgusting details of the nature of the offence; when one was tried and pronounced guilty under this act, their notice of it in the public papers should be simply—A. B. was tried and convicted under the statute of William IV., &c., and ordered to be detained in the penitentiary appropriated for the reception of this class of offenders. This course would put a stop to all comment, and yet punish the crime with efficient severity, and, above all, effectually prevent his corrupting the minds of others.

The bashfulness and uneasiness of the executive in these matters were strongly shown in the commencement of the present year. A man who was under sentence of death in Newgate for the crime of bestiality the authorities caused to be removed to the hulks previous to the report being made to his Majesty in council. This was done in opposition to all precedent, and very many question the legality of the act; but it was without doubt done to prevent the mention of the fellow's name and offence again in print. But the attempt in this way to draw attention from the case, laudable in itself, yet has been the means of rendering it more conspicuously noticed. Inquiries have very generally been made, how it was the man was so privately removed, and how it came he was not reported with the other malefactors? Dean Swift said, that "a nice man is always a man of filthy ideas." In this case, the very attempt to stifle that which the executors of the law

blushed to make public, has been the cause of making it conspicuously known. In another case, a man for the same offence was actually ordered for execution; but Sheriff Parkins, who was in office at the time the circumstance occurred, so strenuously took up the case, that he not only induced the secretary of state to forego the execution of the criminal, but obtained for him a free pardon. If the legislature will follow the course in these offences which I here propose, viz. declaring the being capable of committing them insane, this may furnish an excuse for withholding details from the public, and prevent the eliciting of ideas which may educe latent and unnatural propensities, which otherwise might have slept until the mortality which is subject to their effects were entombed. No one can calculate on the mischiefs of a suggestion to the mind under certain peculiarities of susceptibility. The very knowledge of the liability of human nature to such a horrible lapse I would suppress as much as possible; and to this end should all the measures of the law tend: impressions received in youth, which once for a moment are allowed to dwell on the mind, though first entertained with disgust, may at some future time recur under a morbid condition of the system—from disease and vitiated habits, which never could have been conceived without previous occupation of the mind, and which, in nine instances out of ten, are imbibed in youth, through the public prosecution of these wretches, whose cases are reported in the journals of the day. These are my opinions on this subject; whether they are worthy attention others must determine. I can only say that they are offered with the best intentions, which must be my apology for touching on a subject which many will condemn. The *mauvaise honte* of some, however, lead them practically *in petto*, to tolerate that which the delicacy of the tympanum will not endure to be named; such are the vicious in thought. It may be said, that which I condemn I am guilty of myself, viz. giving publicity to the crime. I reply, that these re-

marks are made solely with a view to induce the legislature to allow no more, and make these the last which shall appear in print. Montesquieu says, "I may venture to affirm that the crime against nature will never make any great progress in society, unless people find themselves induced to it in other respects by some particular custom." In this country it is the custom of discussion and publicity which perpetuates it from one generation to another.

It is said the Lombards were the first who brought this detestable vice into this country, in the reign of Edward III. By the act 25th of Henry VIII. chap. 6, it was made felony without benefit of clergy. The difficulty, however, of conviction for this offence, especially under the severity of the punishment, (death,) renders it a great question of doubt whether the law has not defeated itself; the evidence of one man, who himself must be guilty, can never be deemed sufficient to justify the destruction of life; and when it is considered how very many have been accused falsely, for the purpose of extorting money, and how many families have been rendered miserable by an unjust stigma being fixed on them, it does appear that some alteration in the law is required. Every liberal-minded man in the country must lament that the law allowed one individual, and that, too, a policeman, whose consciences when giving evidence I have ever observed to possess surprising powers of elasticity, to accuse a gentleman of distinguished family of this horrible crime; and that on an acquittal there is no remedy for the stain but an appeal to the feelings and liberality of this very charitable world, whilst under an accusation or indirect imputation of criminality. I cannot withhold, now I have alluded to this case, what I have learnt during the impending investigation, of the character of the accused party. Since this was written, the party has been tried and acquitted, to the great satisfaction of all persons. A servant who was immediately about his his person for many years, is now a respectable tradesman in

the neighbourhood where I reside, and with whom I deal. When the affair was made public, this person was much affected, and took every pains to relate all he knew of the habits and manners of the gentleman in question. He completely succeeded in convincing myself and neighbours that the accused was totally incapable of committing the offence. Subsequently I have seen others who have been in the service of the family, all of whom say that they are ready to lay down their lives to attest that they know him to be quite innocent of the vile and base charge preferred against him by the policeman. No charge, I say, ought to be preferred against any man, unless supported by at least two or more witnesses; and if the accused party be acquitted, a punishment should then be inflicted on the accuser. Some such measure is needed to make men cautious how they point the public finger of detestation against an innocent man; the object, however, is to keep as much of the allusions to this offence from the public ear as possible; and I now make an appeal to the good sense of the press, whether it would not be wise in them, and a charity to posterity, if they were simultaneously to discontinue the practice of inserting cases of this nature altogether; the ends of justice would in no way be affected by their consenting to do so, and there is a chance that time might obliterate the remembrance of the vice, or that it should be deemed an offence to decency, even in the most distant way, to allude to as a matter of history. The propriety of requiring two to appear against an accused party is strikingly shown by a case known to me, which occurred some years since at the Mansion House. A young man, warehouseman to a large sugar house, went to the theatre, where he sat between two others; during the evening a sort of intimacy took place between them; after the performance was over they all three walked into the city together, and adjourned to a public-house. After being a short time in their company they accused him with an attempt, &c, and demanded money: he resisted, and was taken



to the watchhouse. On the following morning, when brought before the Lord Mayor, he had the assistance of an attorney, who was sent by his master; his accusers gave very clear and circumstantial evidence, so much so that the young man's committal was certain, when a thought struck the solicitor. He asked permission to re-examine one of the witnesses, whilst the other was sent out of court; this being acceded to, the attorney interrogated him as to his birth, parentage, education, long or short acquaintanceship with his companion who had gone out of court, asking, among other questions, whether they lodged together, and whether their first knowledge of each other commenced at school, to which the witness replied in the affirmative. He was then sent out, and his companion brought in, and submitted to a similar examination, when, not knowing what the other had said, nor, indeed, of the nature of the interrogatories, his answers were all in opposition to his associate: they were both committed, and subsequently transported for the attempt to extort money under an abominable false charge. Many are the cases in all charges which such a mode of examination would suit when parties were suspected of collusion, did not our foolish law of evidence oftentimes in courts of justice act in direct opposition to the eliciting of the truth.

## CHAPTER VI.

## PRISON DISCIPLINE AND SECONDARY PUNISHMENT.

## SECTION I.

*On the Character of Men who generally commit Crime,  
and the best mode of disposing of the habitual Offender.*

“Ætas parentum, pejor avis, tulit  
Nos nequiores, mox durous  
Progeniem vitiosiorum.”—HOR.

ALL crimes may be said to have their origin from stronger causes operating on men to commit crime, than the consideration of consequences. If, therefore, we could raise the consequences (that is, the penalties) to a level with the propelling causes of crime, there would remain some hope of deterring men from its commission, but this has again and again been tried, and failed, as even death, the greatest supposed consequence of crime, does not operate with sufficient force to counteract the cause. If, therefore, we are unable to augment the terror of consequences, there is but one course remaining for us to adopt, viz. to endeavour to diminish the causes. All legislators and writers who have treated on this subject (punishment) have, I conceive, fallen into one error, which it is of the first importance to point out, namely, that offenders

weigh the consequences annexed to the commission of crime, with a merchant's eye of profit and loss, that the robber sits down and figures to make up his book, like a race-horse betting-man of the turf, calculating how he can stand to win the most, at the least possible risk of losing; now this the professional criminals do to the nicest point of calculation, as regards the chances of detection in committing certain offences, but they reflect not on the particular consequences annexed to any specific crime. Their fears are all absorbed in the general one of detection—of the loss of liberty, and deprivation of their licentious enjoyments; the sight of an officer awakens no other sensations of fear than that of a period having arrived which must terminate their career of plunder and pleasure. Punishment never crosses their minds, not even when committed to prison; then, all their thoughts are engaged on the chances they have of an acquittal, and not on the probable measure of personal punishment and pain which may be awarded them. As the day of trial approaches they begin to discuss with their companions their probable sentences as to time; the happiest prisoners in Newgate being always those who expect to be capitally indicted, because they think, when death is the penalty of their offence, that the chances of an acquittal are multiplied, saying, "The old Recorder will now knock any man down for transportation, if it is only for looking at a man's pocket; but the judges will, if a fellow be to be hanged, give a man a chance." (They never will allow that any, but one of the fifteen, are judges.) The expectants of transportation are invariably the most melancholy prisoners. "What will become of poor Sall? it will be eighty-four months before I shall see her again." Disgrace or punishment is disregarded only as it deprives them of a continuance in an abandoned and licentious course of life; neither stripes, hard labour, or harder food, enters into their calculations of secondary punishment; it is all a question of time with them. "How long will it be before I can return again to liberty and

my companions?" is their daily theme. It is highly proper that all crimes should have an equal, appropriate punishment, and no more; it would be the height of injustice if the law did not aim at this object: at the same time, it must not be disguised that the rigid adherence to this principle is calculated to swell the calendar of crimes. The young depredators being at first only punished for a petty theft, with one month's imprisonment; then two; again, three and a whipping; and, fourthly, six months and two whippings, with numberless intermediate escapes for want of prosecutors to prefer charges against them, and absence of proofs when put on their trials,—at length become so artful and accomplished, that they leave off boarding the enemy sword in hand, but take a command at a distance, in a comparative state of security. Those whom the elder ones employ go the same round, and in due course become all in rotation recruiting officers and captains in the metropolitan regiments of thieves: one boy employs another of less experience, teaching him not only to steal adroitly, but they furnish him with tales and artful excuses, with which he defends himself when taken up. These are, generally, so ably put together, that those in whose hands the administration of the law is placed, commonly are constrained to allow another chance for reformation, until their persons are well known to the officers of justice, and their offences increase in magnitude, when they are sent to the hulks, there to be matriculated, and pass all the degrees to qualify them for confirmed house-breakers for life, if their sentences again give them a chance to practise what they learn there. Penalties against newly-invented crimes have always been inflicted as fast as the crimes themselves have been known and felt in society, but it has never yet been thought necessary to make laws against the kind of offender as well as the kind of offence; for there is a difference in these, and it must not always be inferred that the offence will point out the kind of man who has committed it. The greatest boon which could be granted to

mankind, in the present day, would be, that laws were now to be first made. Would we were now in this happy state. Then, experience on the subject of crime would say, we have now a large increasing criminal population, which, notwithstanding the establishment of an expensive police, and a code of most sanguinary laws, yet propagate their numbers much faster than the law is efficient to remove and suppress them. Further, that this class make it their especial and peculiar business to nurture and educate their offsprings in crime, hardening their hearts, and setting them in battle array against the honest classes of the community, and that there remains to us not the shade of a shadow of a chance to reclaim, under the best system of prison discipline, one in a thousand of these characters, so deeply are their hands imbued in crime. Let us, therefore, first make laws for these men! Now, there is ample room for them in other countries, where there is not the same opportunities for them to become so mischievous to society; we will, therefore, send them all off there, by enacting a law of general transportation for all regular thieves, whatever may be the magnitude or pettiness of their offence—the *onus probandi*, when convicted of crime, to lie with the prisoner, to show that he is not a common thief. If this be viewed as a strong measure, I reply, in parliamentary language, that strong as is the measure, the times and occasion require it, and that it would be, in fact, an act of charity, not only to the unfortunate men themselves, but to their children, living and yet unborn. There is, in truth, no other possible way for the government to dispose of this class; with such a measure they would, in all probability, be rooted out of society in seven years at the most. Their punishment (hard labour) should be generally made known in this country, and it should in no instance be remitted.

“ Mercy is not itself, that oft looks so;

Pardon is still the nurse of second woe.”

Their true condition should be made known, that the rising

generation may be acquainted with the penalties of crime. Many hold that the punishment which is beheld has the most efficacy as a deterring power ; those who are of this opinion should ask the favour of some magistrate to commit them to prison for a few months ; they would then hear and see something of the characters they so randomly venture to legislate for. I wish their zeal would prompt them to this experiment : O what an overwhelming shower of new publications should we have, full of recantations of former errors. If fear can ever operate as a preventive cause for abstaining from crime, report of human suffering will influence men more than the actual sight of it. The mind, especially of the vulgar, is always prone to magnify realities, having ever a strong taste for hyperbole. Unfortunately, this propensity of theirs is now acting in favour of *crime* ; they now persuade themselves that at the worst the life of a convict in the colonies is no such bad life, and believe that, in many instances, fortunes have been, and can again be, made. Most of them, however, whilst at large, do but flatter and pander to their own deception, for when the sentence is passed on them, they become dreadfully alarmed ; yet, as their conversation in the world among their companions has an opposite tendency, many thieves are ready enough to listen to the flattering tale, and thereby derive some modicum of comfort and encouragement in their ruinous course of life. A law to transport all thieves, without distinction of crimes, I say, should be passed ; such a procedure might be adopted without any danger to the other members of society, if a court of appeal were instituted, to correct errors, when they occur in the administration of justice. I shall, however, in this paper presently speak of a measure, which will, if resorted to, enable the courts of criminal jurisprudence to proceed with more certainty in administering justice. Secondly, as in all communities there will ever be some whilst walking on the terrace of moral life, who will occasionally slip off and wander into the broad way of sin,

let it be our peculiar care to rebuke and punish such with mildness, and gentleness of manners, as a good and affectionate father would rebuke his son for a first offence. Let us be careful not to close the door against his return to virtue; let us not by harshness of conduct towards him drive him to desperation and recklessness, lest he in his despair mingle with those who are wholly plunged in vice, and thus become abandoned,—an enemy to his own soul, to his fellow men, and a nuisance to the state. To avert these evils in every case of incipient delinquency, punishment must be light; leniency must characterize all our measures: when imprisonment is deemed needful, care must be taken that the time does not exceed a period more than is just enough for reflection; and mild remonstrance, with any other discipline commensurate to the offence, never losing sight of the main object and end of all punishment—reformation. To accomplish this it must never be forgotten that they are men, and have a fellow feeling of every thing belonging to men. It must be remembered that the human soul has affections, which like the bodies that revolve round the sun, are drawn towards each other, and towards the sun, by some secret and never-ceasing principle, which prevents their flying off in a tangent line, and “running lawless through the skies.” If we carry our thoughts from things corporeal to things of the moral world, we may observe in the spirits and minds of men a principle of attraction whereby they are drawn together in social communities; any deviation from which, or the violation of any established rules made for the good of the whole, is, in a moral sense, a tangential course. Now, if all the parts which make up the whole of a society took to their tangents, it would be the triumph of anarchy; so when one part flies off, partial confusion is the result; some of the members of society are injured, others are tempted to quit their orbits, and speculate on excentric courses. It is very clear, to avail myself of the simile, that the farther they are driven from their natural

orbits, the chances against their return is inversely to their distances. Call them back, therefore, in the early stage of their departure, point out to them the folly of opposing the laws of God and man, never omitting to clearly show them, that they are, in point of fact, the most interested in returning and walking with their fellow men through life, obedient to the principles of nature and religion. Turning again to the habitual delinquents, I say, no consideration should prevent the government from shipping off all London rogues, and dispersing them so as to render them innocuous to any society ; a measure which can only be effected by a regular system of passing a sentence of transportation on all convicts who cannot prove that they are not thieves by trade. This demand of the law could not fail of eliciting the truth, as every man, woman, or boy, whose parentage and early avocations were such as would prove their having obtained their livelihood by honest industry, for any, and what length of time, would be too anxious, under a law which inflicted the punishment of transportation on failure of proof, to give such particulars of their history as might enable those who administer the law to assign them to the proper class of criminals. Those who refused to afford any, or gave a false account of themselves, should be deemed, without exception, all transportable criminals when found guilty of an offence ; the minimum of which the law should define, (if it be thought necessary to except some crimes of a minor kind ; ) but as the object is to break up, and rout a band of desperadoes, lodged in the heart of the metropolis, it should little concern the law under what crime they were caught. When rebellion against the happiness of the community shows his bold front, and defies the strong power of the law, very little ceremony should be used in putting them to flight ; as were heretofore the buccaneers, pirates, and bandits. If a power of this nature were sanctioned by the law, and the judges faithfully discharged their duty, it may be predicated that the present standing



criminal population would either be frightened into honesty, or forthwith remove themselves out of the country, convincing those who may be disposed to feel any anxiety on the score of expense, that their fears were chimerical. To give efficiency to such a law, and at the same time effectually guard against its abuse, some important alterations will be required. Those which occur to me, and have engaged my attention for some time past, are these :—First, a court of trial to determine the question of guilt or innocence of prisoners charged with felonies; secondly, a court of inquiry to class the prisoners; thirdly, one judge to make up and pass the sentences; and lastly, a court of appeal, that errors may be corrected. The court of trial should hear no evidence of character except such as related to general temper and humanity of persons, in trials under equivocal charges of murder, manslaughter, rapes, &c. &c. One week after the prisoner was found guilty he should be brought up to the court of inquiry, to prove his caste, and history, from his earlier days; for the better elucidation of which, officers should be appointed to take their own account of themselves, and then go into the world, and ascertain the truth or falsehood of the same, after which they would be enabled to attest on oath the result of their inquiries, and either affirm or negative the prisoner's own written statement, which they should be compelled to put into court, or presumed to belong to the class against which the law was directed, viz confirmed rogues.

Solon introduced a law to make every man state in writing by what means he obtained his livelihood; and if the account were false, the punishment was death. Now, my proposed measure interferes with none but the guilty, who, when declared so by a jury of their country, are to be called on to give such information as may enable the administrators of the law to correctly estimate their character, condition in society, and avocations, and thereby draw some inference as to their state of mind, and how far it will be prudent to

trust them again with liberty—to mix with honest society,—and if it will, what period and probation will be necessary to fit them for it. There is nothing cruel or arbitrary in this: yet it is a measure which will prevent a determined thief from committing a second offence, or training up others to crime. The judge of sentence should, previous to awarding the punishment, hold a conference in private with the judges of both courts; that is, with those who tried the prisoners, and those who sate in the court of inquiry. By pursuing this course, thieves by trade, when once brought before the court, could never hope for escape; and those offenders who aberrated from the path of honesty, and were considered reclaimable, might be dealt with in a manner to afford the best chance for their being again recalled into society. The early effects of this policy would be the clearing of metropolitan prisons of their contaminating inmates: accomplish this, and burn all the instruments of torture, as not only useless, but mischievous. Boatswains may then be displaced, and men of intellect and real humanity selected, to fill the office of governorship of prisons; moral, as well as legal turpitude, would be, under such a system, fairly before the court, which should, in all their deliberations, enter largely into their considerations in awarding punishment; in very many cases no other sentence need be passed, than placing the parties under the surveillance of the police for a time, as recommended in another part of this work. To the body of rogues it would be a *coup de grace*; thievery would no longer flourish as a trade, the moral atmosphere of the metropolis would be purged of its impurity, nor, under the system here proposed, could it ever again become tainted; what is now looked upon as the greatest of all legislative difficulties, (the suppression of professed thieves,) would become the least, and an undivided attention might be given in framing laws for the preservation of morality, for that class which are liable to fall, but under mild laws will rise

again : a consideration which has never yet met with the attention from our statesmen that it demands. Those who take the trouble to seek for the motives of human actions find them capable of wonderful divisibility ; but the merit or demerit of every act of one man's life depends on the motive which impelled him to its commission. Our law contemplates the act alone, disregarding the motive, or the causes which were the precursors to the motive ; it is true that the heart of man is impermeable to the human eye, and is deceptive beyond all comparison ; still some approximation to the motive, in enacting laws against crime, may not only be attempted, but attained. The discrepancies in our laws, however, prove, past all doubt, that the makers of them never troubled themselves to consider the combination of causes which lead to crime ; they fear that the attempt would lead them into a labyrinth and maze them in confusion ; but if we cannot obtain all that is most desirable, in dealing with the errors of mortality, shall we therefore reject a part of the good, which is within our grasp ? I say a part—for he must be demented, who shall assert that a law which will enable the administrators of it to discriminate between those offenders who are all ill, and those who are but partially so, is not something gained. This is an attempt, to the disgrace of this country, which has never been made, and the consequence has been, that under the sanction of *law* more acts of atrocity, cruelty, and injustice, have been perpetrated *against law*—even the crime of murder not excepted. I need but refer to the Old Bailey Calendar, or annually published papers, where it will be seen that offenders of a trifling kind, from forty to seventy years of age, have been uniformly punished in the same manner as reputed thieves, although they brought into court characters of respectability and honesty for forty or fifty years previous to the commission of the act for which they were so unjustly sentenced. Conceive an offender who has stolen to the amount of five shillings, aged fifty years, who has, throughout

his former course of life, been an useful and virtuous member of society—perhaps a charitable man—one, too, who may have improved and advanced the general interests of his fellow men; then see him classed and punished with those whose whole career of life has been one tissue of crime. Is this justice? is it wisdom, or policy? Some philanthropists, whose minds are engaged on this highly interesting subject, talk of rewards as well as punishments. The reward of virtue is a self-approving conscience, and the comfortable hope of hereafter meeting an approving God; if, however, justice be an attribute worthy the study of mortals, surely the criminals of long standing, and the one of the moment, should enter into their consideration. But it is the boast of Englishmen, that our laws make no distinctions; strange it is, that a country should make a pride of that which is her disgrace, viz. injustice and cruelty; she calls uniform and regular laws for all offenders—*justice*; it is a prostitution of the term: if the actions, motives, and passions of men were uniform, then this might be justice; but is it not injustice, when no distinction is made between the offender, whose crime is the exception to his conduct, and he whose honesty was never in exercise but when he could find no one to rob? But it is said, the judges, in apportioning the punishments for crime, have discretionary powers; yes, attend the Old Bailey throughout one whole sittings! no one who does this (if he gives his attention to what passes) will venture to say such a power, under laws of the extremest severity, ought to be invested in the hands of a recorder, common sergeant, and an auxiliary judge sitting at the courts of criminal law in the city of London. When the laws were made, and the bow strung to its utmost pitch, without doubt the law-givers thought, in the plenitude of their wisdom, that terrorism was in itself sufficient to explode vice and establish virtue; time, however, that expounder of secrets, and exposé of folly, has shown them the fatuity of their legislation; still, unwilling

to acknowledge their error, and repeal their Draconian code, but seeing the necessity of counteracting their sanguinary and demoralizing effect, they had recourse to that emollient—discretionary power, by which the will of the judge is made paramount to all law, and which is rendered null and void when the judge thinks proper to respite the judgment of convicted prisoners. Now, whether such a power should be vested in the hands of those judges appointed by the crown, is a question somewhat problematical; but certain it is that the Old Bailey judges are totally unfitted for such a trust, both from habit and the practice of the courts. If any one is desirous to study the nature of man,—“how use does beget a habit,” and blunt the feelings, let him watch the career of an Old Bailey judge, from his first appointment to the end of a long service on that bench. The late chief judge in that court occupied his seat till all tenderness of sentiment and humanity were struck out of his nature; every spark of feeling was erased and obliterated from his mind. The severity of his sentences regularly and progressively kept pace with the length of time he held the office, till flogging and torture became his judicial delight, and in the end provoked the interference of the aldermen, one of whom, whose humanity was roused at his barbarity, got up and declared that a prisoner whom he (the Recorder) had sentenced to be flogged should not undergo the punishment: this led to controversy in which the public took a part. Caricatures were published, representing the judge himself undergoing the torture of the cat-o'-nine-tails, inflicted by the hands of the alderman, beneath which was written, “It is not Fair-brother.” I remember also the case of a Blackwell-hall factor, who had for a period of fifty years lived in great respectability and credit, being the father of sons and daughters grown up; in his latter days he failed in trade, and fell very rapidly into poverty. He was convicted before the Recorder of pawning the sheets from the bed he occupied in a ready-furnished

lodging, and for this offence sentenced to be publicly whipped in the sessions'-yard at the Old Bailey, where he underwent the torture of one hundred lashes from the hands of the common executioner. This cruelty and careless barbarity of a judge is but one specimen of the conduct of all old practitioners in our metropolitan criminal courts of law, and forcibly shows the necessity there is for an alteration in our system of criminal administration of the laws; a presiding judge, therefore, to measure out punishment from the notes of the trying judges would tend to ameliorate and equalize the sentences. The court of appeal would be a security to the public that the innocent did not suffer the penalties of the guilty. A rational plan of prison discipline might then be instituted, efficient for that great end all humane persons must have in view, viz. the restoration of all offenders to their homes, family, and society; making their very errors useful in bringing them acquainted with the liability of human nature to wander from the path of virtue, and of the absolute necessity there is for all men to watch the operations of their own minds, and to guard themselves against principles of irreligion, and immorality of conduct, the forerunners of all crime. No axiom can be more self-evident than that without reformation the great object of prison discipline must fail. Without the offender be brought to a state of self-accusation, reformation must ever be hopeless, and the important question is, whether mildness or acerbity of punishment is the most likely to attain this object. From the observations I have been able to make, I have been led to consider that the chances of reformation are always inversely to the magnitude of the punishment, yet heavy sentences are passed for the object of working a reformation,—this is the result of erroneous judgment; it is casting a man into the gulf of despair, and telling him to be happy. To degrade a man to the last state of human misery, and deprive him of all hope, is not the way to awaken the latent and better feelings of his nature, through which only

can reformation come. Hitherto no beneficial system has been exhibited; system, indeed, we have none; every county prison differs in the treatment of prisoners as to accommodation, association, food, labour, religious advice, and mental instruction. This diversity of prison regulations arises out of the want of one general national rule. Each bench of magistrates exercise their own peculiar views of criminal punishments, or suffer themselves to be led and dictated to by one individual of their own body, who is more active and busy than themselves. In some instances they are wholly influenced and directed by the jailer of the town or county prison. The absurdity of visiting the same offences with different degrees of severity, in different counties, is too palpable to be dwelt on, and can only be defended by a supposition that human beings differ in character and nature in every county throughout the kingdom; an assumption repugnant to common sense, and disproved by the experience of all ages. In the multitude of judgments there is wisdom, it is said; but if in the management of the affairs of a country every man's opinions are all at once allowed to come into practical operation, what can be expected but anarchy and confusion? Such, however, is the state of our penal code and prison rules; laws are made on the spur of the moment, which clash and interfere with other statutes. Two prisoners shall be sentenced by the judge at the Old Bailey for a like offence, to six months imprisonment each: the one shall be taken to the House of Correction, his crime having been committed at the opposite side of the street from the other, where he will be hard worked on the treadmill, wretchedly fed, and worse accommodated, besides being deprived of all comfort by the sight of his wife or relations, excepting once a month for a few minutes. The other, whose offence was committed in the city, is conveyed to the Counter city prison, where he has very light work in comfortable shops, plenty of the best of food, decent clothes, good lodging, and the privilege of seeing as many

friends as will call on him daily. Such are the anomalies in London prisons. I do not complain of the manner in which city prisoners are treated, for I have reason to think that the mildness of their treatment has tended much to harmonize the prisoners' minds, and facilitated their reformation. When I have visited the prison it has afforded me great pleasure to see them, at their leisure hours, walking about with their books, and amusing themselves in various rational ways, very different from those who have the iron hand of extreme severity laid on them, under the superintendence of a surgeon paid to study how much suffering the human frame can endure. Not only do men differ from each other in their views on almost every subject, but many hourly differ from themselves, exhibiting as vacillating a principle as the vane on the parish steeple. The judges of the Old Bailey are so little acquainted with the nature of the punishments they award, that in the same day they will often grant that as a boon which the next hour they describe as the severest of all punishments, being like the man in the fable of the Satyr, who blew hot and cold with the same mouth: for instance, when passing sentence on boys, they may frequently be heard to say, by way of a proeme, "I shall take care that you shall not, for some time to come at least, have an opportunity of following your practices; I shall send you to the hulk, where you will be hard worked, and severely punished, no your conduct." Almost in the same breath, they will quite another, when consulting Mr Wontner or any of the amocible. on the bench at the time: "The best way will be to assure our poor lad to the ship, where he will be taken amelioration taught to read and write, besides being taught of prisoners, which he may earn his bread." In one instance come into the woman begged the judge to transport her sisters, go out of it she said, from the gallows. The judge, therefore, be otherwise you think we keep establishments to p criminal population? parents want to get rid of them? And sailors,—nearly all



which fall from them, show how uninformed they are of the nature of the punishments they award, and how much they know of the probable effects of seven years' residence with four or five hundred confirmed sexagenarians in crime, although only little more than one-sixth of that in years. "Taken care of." Yes, they are taken care of! The ship is a great hot-bed of crime, which annually supplies the country with thieves acquainted with all the tricks of their art, and informed of the receivers of stolen goods, places of rendezvous, and all other points of information appertaining to criminal knowledge. In addition to all these provocatives (if I may be allowed the expression) to crime, they have, by the system of severity under which they have been brought up from boyhood to manhood, that is, generally from fourteen to twenty or twenty-one years of age, been so hardened and brutalized in their feelings, that murder is contemplated with calmness.

I, a short time since, had an opportunity of examining a youth of nineteen years of age on the first day of his discharge. He had been six years and nine months on board the hulks, during which he had often been severely punished. From what I collected, it appeared that throughout the whole period of his coercion that he had been careless and reckless of the consequences, and that an unaccountable desire possessed him to commit a murder—a feeling which he only subdued by promising himself the pleasure of committing it on his side, or when liberated: this passion, as he termed it, however, worked on till gradually during the last year of his imprisonment, besides which he accounted for by having been removed to another place where he was more kindly treated, and allowed his wife or relations to visit him, which are only granted to those who have served the Counter time. He was a country farmer's boy, who had been transported from Warwick gaol, for stealing a pair of shoes, good lodging, and food, and he, if he were disposed to commit anything about London, and the

means of disposing of stolen property. He very soon convinced me that he had been so well taught, that if he abstains from crime it will be little short of a miracle ; he is, however, gone home to his friends, to whom I wrote a letter describing his state of mind, in the hope that by proper treatment a different tone of feeling may be excited in him.

## SECTION II.

*On the impolicy of over severity in the treatment of Convicts in general, and the views of Archbishop Whately considered on Transportation.*

THE effects of over-coercion appear never to have been yet thought of by those who make the laws. Mark the conduct of our Saviour ! who knew the inmost recesses of the human mind and heart. Did he inculcate the doctrine of severity ? He knew that man was not to be drawn from the ways of sin by severity. When the woman, whose punishment by the law was lapidation, was brought before him, and proved to be guilty : “ Go,” says he, “ and sin no more.” The obtuseness of some men on this head is quite surprising, thinking no crime, however trifling, ignocible. One thing, however, I will take the liberty to assure our rulers of, which is, that without a considerable amelioration of punishment, and of the general treatment of prisoners, crime cannot be lessened, because all who now come into the hands of the law as minor and first offenders, go out of it brutalized and reckless ; how can it, therefore, be otherwise than that we should have an increasing criminal population ? Many of our law-makers are soldiers and sailors,—nearly all

horse-racing amateurs: by way of illustration I will ask them a few questions applicable to the subject. Did the men you led into action dread or fear death most in proportion to the number of times they had before met him in the field, face to face? Are you not always under apprehensions for the fate of the day, when leading newly raised troops against the enemy, more than when leading old ones into the field, dreading a panic? Is it not well known in the army that a man once flogged becomes a worse soldier, and that if he is punished a second time in this manner, that he is considered unfitted for the service, and that the regiment is glad to part with him? Do you not give orders to your grooms and trainers to use gentle means in breaking and training your horses? and have you not made a law to restrain these men from cruelly beating your cattle? What is man but an animal, and how is it you cannot see the same necessity there is to adopt the same course with him, the very worst of the species being endowed with God's best gift,—reasoning faculties,—and who are, however criminal, susceptible of kind treatment? Bentham says, speaking of cruelty to man, “A government that persists in retaining these horrible punishments can only assign one reason in justification of their conduct: that they have already so degraded and brutalized the habits of the people, that they cannot be restrained by any moderate punishment.” But this is an argument for foregoing the practice, and redeeming at least the rising generation from brutalization. Almost all profligate and rebellious sons have austere and severe fathers; the effects of cruelty and severity, under any circumstances, are to strike out of man all feelings of sensibility, and to change his homogeneity, to blunt their minds, and render all within dark as Erebus. Those who have occasionally mild sentences passed on them—even those of the worst kind, will be heard to say, “I think myself lucky; I must now alter my conduct, and come no more to prison;” in their own phraseology, “I shall cut it, and get

to work ; 'tis the best game after all." How many of these resolutions hold out till the parties are entirely reformed, cannot possibly be ascertained ; probably many of them fall again into crime through the force of circumstances which surround them—lost character, and desertion of friends in consequence, &c. &c. This, however, I know for certain ; that those who return a second, third, and fourth time to prison, by far the greater proportion are those who have undergone severe whippings and solitary confinements, besides many who have come under more heavy sentences, such as that of death, and been subsequently pardoned. It is worthy of remark, that I have been in the habit of speculating an opinion on the probability of the prisoners' return to crime after their discharge, or on their pursuing an honest course of life, and I generally found, as far as I could ascertain the facts of the particular cases, that I was right in my judgments on an average at least five times out of six. My opinions were formed from observation, and cannot be well explained on paper ; some prominent and general features, however, may be named. The kind of crime of which a man was found guilty I never considered, unless I may except one ; I always observed in those who had trust reposed in them, or who received any unexpected favours, or acts of kindness, from those who had the charge of them, an almost instantaneous alteration of manner ; and a change in their conversation, from swearing and obscene language, to rational discussion on their situations. If I observed this improvement progressive, and moral ideas spring up and fructify in the mind, together with a countenance and demeanour in keeping with the whole, without any relapses or motives for disguise, I considered it augured well. Sometimes when a man has been far advanced towards this improved condition of mind, I have known the cruelty of the keeper, or the infliction of an injury, real or supposed, throw him back into a perfect state of recklessness, from which he never afterwards recovered ; so

true it is, that that punishment has the strongest reforming tendency which is best calculated to weaken the force of the irascible affections. That severity which approximates to cruelty will ever deaden the affections—the keys to the mind—and occasion men to be lost to nature and her charities. Man is the only being of the animal creation in whose constitutional tendencies the utmost extremes of good and evil are diffused, and the drawing out more of one than the other occasions all the varied shades of the human character; some delight in dispensing happiness, and in administering consolation and comfort to the afflicted; others there are, whose whole delight is tyranny and oppression. Harshness of treatment draws out the worst passions; mildness, on the contrary, brings forth the kindest affections. It not unfrequently happens, that one for a time lost to crime is shut up and associated with a prisoner of better education and general information; when this occurs, the man who has the advantage in knowledge is seldom chary of his conversation, taciturnity not suiting the gloominess of their dormitory, besides being prompted by pride, and the desire they have of taking the lead over their more ignorant companions. From these accidental associations I have observed many extraordinary effects; men who before knew no other language than slang, and who had no other thoughts than to endure their punishment, and on their liberation to return again to their wicked courses, have suddenly become thoughtful, exhibiting a complete reformation of the mind. In conversation with them, they will tell you, that if they had earlier known the pleasures of thinking, and how much there was to be known of things in and about the world, that they never should have been there. Instances of this nature are not rare, and under a system which would avail itself of the opportunities, as they offer themselves, many excellent results might be elicited, great and splendid improvements in prison discipline might be established.

These favourable moments, however, are now lost, for want of persons employed in our prisons, who are competent, and who should be armed with powers, to carry on the great work of reformation to the end. I the more especially call the attention of my readers to these characteristics of uninformed and untaught men, as the parliamentary committee on secondary punishments have recommended in their report an increase of severity in penal punishment—solitary confinement, &c. &c. No man who reads their report, if his heart be not indurated by inhumanity, will not denounce their views as unsteady and fraught with mischief; their minds are assuredly distorted by unworthy opinions of their own species. “The great principles which your committee have endeavoured to establish, are the necessity of a separation of criminals, and of a severity of punishment sufficient to make it an object of terror to the evil-doer.” Thus, we see that ages of experience are lost on men, who themselves are educated, tenaciously and pertinaciously still holding their prejudices in the teeth of facts opposed to them, and which are as clearly seen by the majority of sensible men as the sun at noon-day. In another part of their report they say (page 15)—“The committee are of an opinion, that in future no persons sentenced to transportation, with the exception of those selected for punishment in the penitentiary, should be allowed to remain permanently in this country, and that henceforth the convict establishment should be considered an intermediate station between the gaol and the penal colonies. As the severity of the punishment will be greatly increased by the adoption of the restrictions already suggested, its infliction for a period, varying, according to the guilt of the offender, from eighteen months to four years, as a preliminary to transportation, will probably be sufficient; but the adequacy of simple transportation, as a punishment, being apparent to your committee, they are of opinion that no male convict, whatever may have been his previous character or station in

life, who may commit an offence deserving of actual deportation, should be exempted from the previous severe punishment of hard labour. in the manner here recommended." Here is a fine specimen of legislative justice, and recondite wisdom. "*No male convict, whatever may have been his previous character, or station in life,*" &c. Well may justice be described as being both blind and lame. What ! will you punish a man who commits one offence, in the same manner as you do he who commits hundreds, of equal guilt ? To use any kind of argument to men having such preposterous notions of justice, is like attempting to produce a vacuum, by dividing the air with a sword. But there are other considerations involved in this question : that which is a very severe punishment to one man, may, from peculiar feelings and habits, not be so to another. The criminal, whose whole life has been spent in crime, possesses no sense of shame, has no near and dear friends of respectability to mourn over his fate, no connexion with tender sympathies to rend asunder, no susceptible hearts to pine in sorrow for his sufferings, no wife or children to daily blush for his degradation, no position in life to be hurled from ; or if he have wife and children, they are already embarked on the same disgraceful and hazardous calling as the father followed, and only regret his loss, as his absence deprives them of sharing further plunder. The man, however, who makes but one slip, perhaps, in a long life, and this, too, under circumstances of great palliation, (numerous instances of which might be adduced,) undergoes, in a sentence of hard labour, the punishment of five hundred convicts of the other class, if he be educated, and has filled a station of respectability among his fellow-men. Further, to his suffering is superadded a sentence of punishment on the innocent ; his wife, children, and numerous relatives, all of whom share in the sentence, and feel its effects throughout their lives. This inequality of punishment must ever continue, as long as one penalty is invariably inflicted on all

classes. But is it not practicable to invent penalties for crimes and classes? I say it is; and thus apportion a due meed of punishment for every offence, arriving at once to that great desideratum of all legislation—equal justice.

The committee on secondary punishment have, it appears, discovered that transportation is non-effective as a deterring power in preventing the commission of crime. On looking over the published document, it would appear that they have arrived at this conclusion through the evidence of Messrs. Capper, Wakefield, and Wontner. It, however, needs no Solon to inform us that all punishments have been ineffectual in putting down crime; but if it be said that the punishment of transportation is not dreaded more than all others, I must beg to differ with them *in toto*. Their logic is based on a fallacy, they have drawn general inferences from particular cases, and thus arrived at false conclusions. The whole body of London delinquents hold it terrible, above all other punishments, viewed both as to length and severity; those who return from the hulks to prison, will sit for hours detailing their sufferings; and the effect on those who hear the account is marked and visible the whole time they remain in prison, if they expect to come under the sentence. Their friends, too, who visit them in prison, all appear deeply impressed with what they describe as a horrible punishment; the same feeling is prevalent among those at large, there being always some companion who has suffered the punishment to give them information regarding its nature. Scarcely a day passes throughout the year that the postman does not bring four or five letters from the hulks into Newgate, written by those who have recently left the prison, under a promise to some companion to write and describe the punishment, many of which I have seen, but I never heard of one which treated the discipline lightly: many contain prayers to God to take them out of this world; others tell their correspondents that it will be their last letter, as they have resolved on self-



destruction, desiring them to do the same, rather than be conveyed to such a place. Many which I have seen contain rude pen and ink drawings to illustrate their punishments, and warn their companions to avoid coming under the same sentence, adding, not unfrequently, "Go slap up, and be hanged at once, rather than come here." Meaning thereby to say to their old associates, Let your offences be such as will either hang or acquit you at once; in other words, go for great stakes, and blench not. Why, then, it will be asked, does it not deter them from those acts which render them liable to suffer the severities of it? For this plain reason, because no dread of any punishment will restrain men, who are embarked in a pursuit, wherein even death and licentious enjoyments are the alternatives. These men, I repeat, are a body, so deeply involved in crime, and so girdled round by circumstances, that they cannot extricate themselves, even were they so disposed. Pass a law to mangle them, to deprive them of a feature, limb, or member of the body, every time they committed an offence, and you would have the limbless trunk brought into court for judgment at last, if they survived their former punishments. What is the use, then, of committees to devise sanguinary punishments, which are to affect all classes? If severity will not awhape the regular offender, let us have some consideration for the habits and manners of the other members of society, and forbear to stigmatize our country and disgrace humanity with any further legal cruelty. If a convict, after having been discharged once from the hulks, again returns, the inference is forthwith drawn, that he was on the former occasion too well treated, and that he has not had punishment enough to make him sensible of his error: it is forgotten that when the man quitted the hulks, the probability was that he had not a friend in the world, and no home where he could lay his head for a night, nor would any one employ him without a character. Thus circumstanced, and being a gregarious

animal, it was natural for him to look out for old associates, who, whatever may have been his determinations, would soon make him throw to the winds all previous resolutions of honesty. However this question be viewed, their homogeneity is such, that expatriation is the only remedy: in the colonies they can earn their bread, and become useful to those who employ them, and after their period of service is expired honestly obtain a living: why it should concern any one *here*, on this side of the globe, that they are too happy, I know not, yet such there are who are making a stir to circumscribe their comforts, under a chimerical notion that men commit crime to procure for themselves a passage to the Antipodes, and there to become slaves. "What damned error, but some sober brow, will be found to give it countenance?" Archbishop Whately and some others have recently adopted this opinion. When a minister of Christ volunteers a work on crime and punishments, it is natural to expect that sentiments of mercy and forbearance would characterize his writings; but in the work now before me, "Thoughts on Secondary Punishments," this redoubted teacher of Christianity has taken upon himself the ungracious task of urging the legislature to acts of further cruelty against his fellow-man. Without doubt, the Archbishop is sincere, when he says he wishes to make a *purgatory* instead of a *paradise* for a residence to contain those who offend against the laws; and he may, too, possess a desire to be useful in what he has written, but the book is no credit to his understanding. Every page in it evinces a want of Christian charity, and the absence in the mind of the writer of a knowledge of human nature: crudity of thought, poverty of style, and want of feeling, but ill suit lawn sleeves and a mitred brow. The doctrines of legislation which he propounds, and the arguments which are adduced in support of his notions, did they proceed from the pen of another man, would be best passed over in silent neglect. The whole work is an *omnium gatherum*, of contrarieties, of propositions,

arguments, and corollaries, forming a fine specimen, in the entire, of a perfect sorites; station, however, giving them a sort of authority, and with some a sanctification, a refutation of them therefore becomes necessary. In page 36 this writer has struck out a perfectly novel idea; speaking of penitentiary labour, he says, "My object in this would be, to superadd to the habit of labour, which it is the object of most penitentiaries to create, an association, not merely of the ideas of disgrace and coercion with crime, but also of freedom and independence with that of labour." What! imprisonment, labour, coercion, freedom, and independence, and all to keep company together? why, the millennium will be nothing to this: what is the walking of the lion and the lamb together, compared with this association? I wish the learned writer had told us whether he called this state paradise or purgatory, or something between them both. But let me proceed to the question of transportation: the writer now before me makes great complaint against the excellent manner in which the convicts are fed at the hulks, and says, at page 68, "If a fine lady or gentleman were promised a sight of a criminal sentenced to hard labour, and were to be shown a man occupied all day in raking mud out of a ditch, and dining on hard dumplings, with dripping poured over it, (the Suffolk dainty,) they might, perhaps, think his punishment too severe, and might be surprised to be told that he was, after all, no criminal, but an honest labourer, who was very well satisfied to get such good employment; and that, though probably he would be glad of better diet, more beer, and less work, he would find himself as uncomfortable, if confined to the mode of life and occupations of those who pitied him, as they would be in the scene of his highest enjoyment, the chimney-corner of a dirty ale-house." By this is meant, that the convict labourer is as well, or better provided than the free labourer. This is drawing major inferences from minor propositions. Without doubt many are undergoing the pangs of gastric bitings on

the coats of the stomach, whilst the convicts are regularly, but coarsely fed ; but are we to look out for the extreme of accidental misery, and place the convict in a similar condition for a term of years, because there shall not be in the whole country a being, under any circumstances, so wretched as himself, at any one particular moment of time. If the labourer wants food to day, he has health, strength, and liberty to encourage his hopes for the morrow, and his back is out of the reach of the cat-o'-nine-tails ; his limbs are unencumbered with fetters, his wife shares his troubles with him, and, if things come to the worst, the parish must receive him till work comes in, which he still hopes every day will bring him. Suppose, however, the free labourer's food and work to be even worse than the convict's for a length of time, having no bright days ; is there no hope left him ? will he not say in his homely phrase, " It's a long lane that has no turning." Is freedom nothing, and conscience nothing, with one who never yet committed crime ? Then there is " the chimney-corner of a dirty ale-house," the climax of all his enjoyments, which the convict has not. The reverend gentleman might have said, that convicts were better off than watermen on the river Thames, because the latter were more liable to be drowned, and that some watermen met with their death in that way ; *ergo*, all the convicts should be drowned. Again, page 70—" To one brought up in refinement, a sentence to wield the spade or axe, and live on plenty, though coarse food, for seven years, would be felt as a very heavy punishment for flagrant misconduct, and might induce him to abstain from such *misconduct* ; to the majority of mankind, it is the very *bonus* held out for good conduct." Had the writer of this remark known, in the slightest degree, any thing of criminals, he would not have so blundered : the refined convict, having lost his character, and once respectable station in life, and, under his severe disgrace, all motives which operate to make shame an auxiliary in restraining men from crime, when he quits his

spade and axe, thinks only how his talents may best enable him to make reprisals on that society which he thinks have dealt too hardly by him, in making him an outcast of it. It is precisely such men as here spoken of, who are now the leaders in crime, and who have brought it to a science which outvies and eclipses the one of law-making; it is for this reason, I say, the incidental and regular offender should not be associated in punishment. The heretofore respectable and educated convict, but now, under a degrading punishment, a desperate man, gladly avails himself of the information he has acquired, and the connexions he has formed during his long sojourn among thieves, to become a planner and plotter for a party; his manners and talent giving him the lead in all undertakings of plunder, excepting only the actual commission of the act, which he takes special care shall be performed by the most able and daring of the subordinates of his gang. Confederacy in crime has arrived to a great height in London, and I hesitate not to affirm that there are five hundred now in the metropolis, or on their journies of business in the country, who are what are termed master men in robbery, all of whom emanated from that very class, the archbishop supposes the punishment of transportation has the best effect in deterring from crime. The probability is, that had these men, under a better system, been moderately punished, and disassociated from the habitual offenders, that the society from which they originally came would have again received them, and made them, through industry, if not very useful, at least innocuous members of the community. With regard to transportation holding a *bonus* to the poor man, there are none in London (because they have all the means of information as to its nature) who do not hold it, as said before, in great dread. In the rural population many, without doubt, whose sufferings from poverty are almost unbearable, become reckless, and say to themselves, "No change can be for the worse." None but the archbishop, who is residing in another

planet, as it were, from those men he writes about, could be so egregiously mistaken as to suppose that any will voluntarily undergo expatriation and slavery, for liberty and home, under any circumstances. The archbishop is altogether under a delusion on this subject; and it is a very fortunate circumstance that his book was not published at sevenpence, instead of seven shillings: had the poor been enabled to read it, I fear he would have to answer for the crime of deluding many others besides himself. It seems that some arch convict wags have been playing off their jokes at the expense of his credulity. Describing the satisfaction of some men when conveyed on board the ship to be transported, he says, (page 72,) —“ One observed, in speaking of the ship, that ‘ Mr. Reedy’s parlour was never half so *clane* ;’ while the burden of another was, ‘ Many a *Mac* in your town, if he only knew what the situation of a convict was, would not be long in following my example ! Thank God for the same ! I was never better off in my life ! ’ ” It is hardly credible, that one whose business it is to teach other men, should be so weak himself as to take the bravadoes of two Irish rebels, for his premises to found a book upon. Why, I have heard men say, after receiving a heavy punishment under the cat-o’-nine-tails, that “ it was one of the *pleasantist* ticklings they ever had in their life times.” What will not some men say, and low Irishmen too ? Again—“ Sundry instances have come under our own observation, (and many of our readers, probably, could multiply them to a great extent, if each would note down such as he hears of on good authority,) of convicts writing home to their friends in England in the same style of self-congratulation, and exhorting such of them as are in a distressed situation to *use their best endeavours* to obtain a passage to a land where such cheering prospects await them. Two instances we know, of a master and a mistress, who had each been robbed by a servant subsequently transported, receiving a friendly greeting ; in one of the instances personally, in the

other by a letter, accompanied by a present, with acknowledgments of former kindness, from these very servants, who had realized large property; one of them in New Holland, the other in Van Dieman's Land. The latter seriously urged her mistress to come out and join her, and held out the certainty of making a fortune! It is most consolatory, no doubt, to reflect how thrifty and well-conducted these individuals must, in all likelihood, have become, and to observe their dutiful gratitude. But gold may be bought too dear. Is it worth while to hold out a temptation, which will be the means of spoiling one thousand servants, for the sake of trying how effectually we can reform half-a-dozen of them." This is worse than the Irish story! What is so sweet as revenge to a low mind? and what revenge is more grateful than rising and towering above those who tried to put you down? In all cases wherein the prosecutor and prisoner are known to each other, from previous connexion, in any way, a bitter feeling subsists between them, and the principle of revenge is active on the part of the prosecuted party. The former says, ingratitude has been added to crime; the latter is generally under disappointed feelings at being prosecuted, having presumed, and, in their own mind, drawn largely on supposed regard and leniency of disposition on the part of the prosecutor; and I do not exaggerate, when I say I have seen myself fifty of such letters, which were concocted in London, even before the convicts were removed from Newgate to the hulks. Those who are deficient in dictating or writing a letter, will get others to make up a tale for them, ready to write home when they arrive at the colony, saying to themselves, "He, or she, (meaning their prosecutor,) shall never know if I suffer ever so much, for I will annoy him or her by writing a letter, and saying I am better off than I ever was; and, after a bit, I'll tell them I have made my fortune." But let us suppose some few do succeed in a long course of years; how does that affect the question? A master of

black slaves may form an attachment to one on his estate, give freedom, and even bequeath his fortune, to him or her who has been fortunate enough to gain his esteem. But does this prove that slavery is no punishment to those who endure it? Perhaps the female convict to whom the archbishop alludes married well in the colony, and made a good wife; if so, her husband did right to reward her, where good wives are so scarce. As to the male convict, who called on his prosecutor, this was evidently a piece of impudence and bombast, for which he ought to have been kicked from the door.

The actual sufferings of transportation have ever been much misrepresented, and I regret to add, that the conduct of the authorities who are charged with the management of Newgate affairs, tends very much to keep up the delusion of the public on this head. It is very natural for the friends of those convicts who have means, and are respectably connected, to make every effort to inquire what will be the real condition of their unfortunate relatives, whilst undergoing the sentence, and to show every desire, if possible, to alleviate their punishment: having these feelings, they apply to the gentlemen at Newgate, where they are but too frequently informed that it will be all for the best, and that the culprits will be better off abroad than they were in this country, holding out many flattering hopes which never can be realized. These statements, I am aware, are put forth with no improper motives; but to allay the anguish of mind in which parents and others are placed by the situation of distress, in which those for whom they are interested are involved. I have frequently seen transports in a state of exstasy, after having had an interview with their friends, in the office at Newgate, saying they are to have a comfortable situation when they arrive at the colony, and that they are promised letters of recommendation from certain aldermen or sheriffs, &c. &c. Under these hopes, many go off to the ship cheerful,



and apparently happy; but the old offenders, who are thoroughly acquainted with the nature of the punishment, say, on these occasions, "Ah! let him enjoy himself whilst he may, he will find out his mistake soon enough." I have now before me a letter from a gentleman who has recently returned from New South Wales, where he has for many years been settled as a colonist: it being a faithful description of the real treatment of convicts, I shall here transcribe it. "In considering transportation as an effective punishment, I shall premise, that by the term is meant such an one as will prevent a repetition of crime by those punished, and deter others from its commission. That, by transportation, the first is effected is incontrovertible, as from a thousand sent out, perhaps not one ever returns; consequently, those transported are more effectually prevented from renewing their depredations, &c., in this country. That it is a *punishment*, and a most severe one, and therefore calculated to deter from crime, all but such as nothing will deter, (*i. e.* those in a state of extreme misery and destitution,) I shall now proceed to show. There can be nothing more easy than to make known to all, the following brief but correct state of the case. A man under sentence of transportation, *perhaps for a very trifling offence*, is sent on board a convict ship with near two hundred others, comprising, among them, every gradation of crime, and all are heavily ironed; they are strictly guarded, and, during the voyage, must perform their share in keeping the ship clean, cooking, &c. Whilst on board they are liable to be severely flogged, and otherwise punished *for the slightest misconduct*. On arrival they are indiscriminately assigned to masters, *for whom they must work as directed*, receiving nothing in return for their labour but a very moderate allowance of food and clothing. For the slightest neglect, disobedience, or incivility, they are liable to severe and summary punishment. Those under a sentence of seven years must serve four years with one master, or five with two,

without offence or punishment, and *then* must obtain a good character, with strong recommendation from their masters and the magistrates of the district, before their applications for tickets of leave can be considered. If such applications are approved, a ticket of leave is granted, which is a permission to work for themselves during the residue of their sentences, subject to certain conditions that are rigorously enforced. Punishment, during their assignment, either protracts the granting of a ticket of leave, or renders them altogether ineligible for such indulgence, or any other. Thus, a man for stealing a pocket handkerchief is sent on board a convict ship with near two hundred others, is heavily ironed, strictly guarded, made to work, and subject to severe punishment during the voyage. After being cooped up in the vessel *for six months*, he is sent on shore *in his convict's garb*, and compelled to do any work that he is ordered to perform by the master to whom he is assigned, for the space of four or five years at least, *without any remuneration*, and subject, *during the whole term of his sentence*, to severe and summary punishment for even the most trifling offence. Previous to his embarkation, or landing, he is strictly searched, and is not permitted to retain any money; should any be taken from him it is kept until the expiration of his sentence. The local regulations, as regards convicts, are extremely strict. It is a most egregious mistake to suppose that any distinction is made in the treatment of convicts, on account of what they have been, their sentence or crime; as I have often seen attorneys and the like working at the hoe, and remember seeing a man, *who had been a captain in the navy*, a common convict constable, in a hut on the road side, about one hundred and twenty miles from Sydney! After reading this statement, will any one contend that transportation is *no punishment*, or that it is difficult to make known the manner in which convicts are treated under it? I should have mentioned that those under a sentence of fourteen years are

not eligible *for any indulgence* until after they have served *at least eight years*. To contend that transportation is the cause of crime is sheer nonsense and absurdity." In another part of his letter he adds—"I do not believe that one individual out of a hundred thousand commits an offence in order to get transported, who can obtain a comfortable subsistence by labour here." And, again,—“I have been frequently asked whether the convicts are not troublesome, dangerous, or a nuisance in the colonies? And my reply has been, that so far from being either troublesome or dangerous, they are infinitely better behaved, and more easily managed, than free labourers; and that instead of being in any shape a nuisance, they are invaluable to the colonists. My own employment of considerable numbers, in addition to my observance of them throughout the colonies, fully justifies this assertion.”

This is the evidence of autopsy, that which has been seen and heard—a judgment founded on years of actual experience; not made up in the study by cudgelling the brains, or from vague reports, the putting forth of which may arise from causes ramified into ten thousand of falsehoods, and sometimes from facts which have been distorted by the stultiloquence of those through whose hands they pass. Mendacious inventions of foolish and wicked men are taken by many for the currency of sterling truths. In every word that a transport utters there is a latent motive which directs his tongue, (I speak of them generally;) thieving does not characterise them more than lying and boasting, which among themselves they call bounce. All their notions are of a larcenous kind: if they cannot steal your property, they compensate themselves by the continual practice of deception in every thing they say or do, which being a species of fraud, keeps up the habits of cheatery so grateful to their tastes. The subdulous character of the generality of convicts renders every sentence they utter totally unworthy of credit, unless very strongly corroborated

by collateral testimony. I am peculiarly desirous to impress this point on my readers, as much is in print on this subject ; and in forming their opinions as to the truth or falsehood of the various statements which they read, they must reject all that matter which emanates from professional rogues. About three years since, Mr. Wontner, the governor of Newgate, received a letter from a young man, a transport in New South Wales, which was inserted in most of the daily newspapers by order of the sheriffs. The letter commenced by thanking Mr. Wontner for the kindness shown him while in Newgate, and then went on giving a most melancholy picture of his then wretched state of existence. He said he was some hundreds of miles up the country, beyond Paramatta : that he was employed in tending sheep, slept in a mud hut on straw, and living on the most coarse food, and, above all, was forty miles from any place of religious instruction, which grieved him more than all his other troubles. Since the receipt and publication of this letter, I have seen a near relation of the writer of it, who informed me that the convict was never so situated as described in his letter ; and that he (the relation) had about the same time himself received a letter explaining the motives which induced him to write the one addressed to the governor of Newgate ; viz. that on his arrival in the colony the great interest which had been previously exerted for him by his friends procured him some signal favours, which excited the jealousy of another young man, a fellow-convict, who went out with him, and who threatened to write home and inform the authorities of the shameful partiality shown. This alarmed the favoured man, who then wrote the letter in question, in the hope of counteracting any effect his rival's communication might produce on the minds of those to whom it should be addressed, and was sent as a *coup fourcé*, aimed at his adversary. This anecdote, of the truth of which I have no doubt, proves what reliance ought to be

placed on accounts coming from convicts resident in the colonies.

A large portion of the archbishop's work is devoted to the probable state of society, which will ultimately be brought about in the colonies under the present system of transporting felons from the mother country. His prognostics are very portentous, and even awful. The writer appears highly impressed with the evils arising from immorality, but says, at page 139, "*We cannot admit that the reformation of the convict is an essential part of punishment ; it may be joined incidentally, but cannot necessarily belong, to a penal system.*" Hear this, ye Christians, from one whom ye pay to preach the gospel ! Our Saviour saith, (St. Luke, chap. xv. verse 7,) " I say unto you, that likewise joy shall be in heaven over one sinner that repenteth, more than over ninety and nine just persons which need no repentance." Again, (ver. 10,) " Likewise I say unto you, there is joy in the presence of the angels of God over one sinner that repenteth." Maugre the archbishop's anti-christian doctrine, however, the work of reformation does go on rapidly in our penal colonies ; nor is there any other known system under which such grand results could possibly have been brought about in so short a space of time. Having, however, got the crotchet into his head that transportation of criminals is an evil, he very unfairly rakes up every argument which can be urged in opposition to the system, purposely avoiding all which may be said in favour of it. All circumstances considered, the moral state of the colony transcends the mother country. In 1828, the free settlers, and those born in the colony, were 14,390 : leaving 22,208 for the convicts, out of a population of 36,598 ; yet the colony goes on progressively improving both in habits of industry, and in morality, whilst society in Britain is daily retrograding, particularly in the latter. But with this writer, a state of morality or immorality are all one : whether he

treats of the Bush-ranger or the reformed and now industrious settler, both are denounced as working monstrous evils, and he illustrates what he has to say on the latter by the case of May, who was convicted as a principal in the murder of an Italian boy, killed for the sake of selling his body. At page 131 are these remarks: "Now, what a vast difference is there between this man's original and commuted sentence! Instead of being ignominiously put to death, in two days after his trial, amidst the yells and execrations of a savage populace, he is detained for some weeks in the society of his friends at Newgate; he then sets sail, in company with two hundred criminals, among whom there is every variety of vice, adapted to every taste; whether finished and refined villany, coarse brutality, or wanton profligacy and recklessness, should be most agreeable to his disposition; till, after some months passed in a state of total idleness, the ship lands its cargo at New South Wales. He will then probably, not being a mechanic, find himself assigned to a farmer in the interior, where the lightness of the labour, the abundance of food and clothing, the excellence of the lodging, and the fineness of the climate, will soon reconcile him to his change from the life of a resurrection-man; and, out of mere prudence, he may perhaps avoid misconduct towards his employer, and the commission of fresh crime during the next eight years; at the end of which period he will receive his ticket of leave, become his own master, and by industry at one time, and at another perchance by less regular means, may contrive to keep the evening of his life in a state of tolerable comfort and physical enjoyment."

Now, it is evident, from the manner in which this case is brought forward, that the clerical writer thinks this result a bad one, the price of which is, the convict's total or comparative reformation. If we attend to reason, the mistress of all law, every sensible man will find occasion to rejoice at the termination of May's career, as imagined by the

writer, if we except the allusion, "perchance by less regular means." Where is the man now in existence to whom nature has given a soul, who will not wish even Bishop and Williams, his companions, alive again, if he could be assured of their sincere repentance? Probably every body but Richard Whateley, D.D., Archbishop of Dublin, who thinks all sins would be best expiated on the scaffold, rather than in tears and anguish of soul. Every instance of a convict's success in the colony is greedily fastened on by our reverend author as a case to prove the inefficiency of transportation as a punishment. Now when it is considered that in every instance of a convict's making any money, that he must have served as a slave from five to eight years, hard worked, coarsely fed, and most wretchedly lodged; (generally in mud huts at a great distance from their master's premises, no bed but the long dried grass which is spread on a kind of bench, which serves for a seat in the day, and a bedstead at night, with two coarse horse-rugs for a covering;) further, that when emancipated from this misery, having a ticket of leave, that patience and industry for a great length of time can only enable them to become settlers on a small plot of land; after which, under skill, industry, and great regularity of conduct, can they only hope for success. I say, when all these circumstances are considered, it will require all the sophistry, and rhetorical hyperbole of a whole bench of bishops and archbishops, to persuade mankind that no good purposes of reformation are accomplished under transportation. Words, however, must be thrown away on one who can think and write as follows, (p. 136 :) "It will be observed, that even this person" (alluding to a convict who had written a letter to Mr. Wontner from New South Wales) "entertained *hopes* of improvement, which should be *altogether* excluded from a good penal system." What a perversion of the term, to call that system *good*, which will leave man without hope!

Without the smile from cheering hope be won,  
O ! what were man ?—A world without a sun !

But our Christian teacher says, punishment is not only not severe enough, but that there is not enough of it inflicted at home : calling, throughout the work, on the legislature to substitute *great* pain for *little* pain,—

By my soul's hope of rest,  
I'd rather have been born, ere man was blest  
With the pure dawn of revelation's light ;  
Yes ! rather plunge me back in Pagan night,  
And take my chance with Socrates for bliss,  
Than be a Christian of a faith like this.

It is curious enough to observe a man who blunders in every page of a book of two hundred and four, and who also contradicts himself in almost every alternate one—endeavouring to put Mr. E. G. Wakefield's work on one side, by affecting to say that it was “ written in bad spirit,” and “ bad taste,” &c. Many of the inferences in Mr. Wakefield's book are certainly very erroneously drawn ; but as a work of national utility, it far exceeds “ Thoughts on Secondary Punishments ;” which is a work founded on chimeras, evidently written by a man possessing a hard heart and weak judgment, or he would not have ventured his name in print on a subject of which he knows comparatively nothing. His notions are randomly written down, unfounded on any data ; and when any facts are cited, they are always distorted or misapplied. Thus, because Dr. O'Halloran was, after a long service, allowed to keep a school in New South Wales for the support of a large family, the archbishop takes occasion roundly to assert, p. 117, that all gentlemen convicts are allowed to live in a “ state of comfort and enjoyment ; that is to say, they are employed as clerks in the government offices, or given as tutors in private families ; their whole time, except when occupied with business, being at their own disposal.” Now, it is well known to every person who has given his thoughts to this subject, that



whatever may, under the necessities arising out of a newly-founded colony, have been formerly done in the disposal of convicts, that no partiality is now allowed; it is, therefore, unfair to take up cases of twenty or thirty years occurrence, and not at the same time state the amended system. In a note, p. 118, is this very illiberal remark on the case of Dr. O'Halloran—"Thus these persons corrupt, not only the grown, but also the growing generations." Dr. O'Halloran was transported for forging a frank on the present Judge Garrow, when he was attorney-general. The offence cannot be justified, but at the time it was committed many persons, well situated in life, were in the habit of doing the same thing, till it was at length determined on to make an example, and it fell on Dr. O'Halloran. From all I have heard, however, of the doctor, and his large family, the people in New South Wales are disposed to give them credit for having performed more good in the world, than all the archbishops which have ever been translated into the see of Dublin. It is admitted on all hands that they have, by their talents and industry, been a great boon to the colony, in the education of youth; yet, as if enough had not already been suffered for the expiation of this offence, his innocent sons and daughters are again dragged (through the father) before the public, by this unfeeling and merciless head of the church. Having exhausted every argument to prove that, which is in reality the greatest of all punishments (transportation) to be no punishment, the writer proceeds to incite the government to alarms for the safety of the colony, representing the inhabitants as demoralized to the last degree, and politically headstrong. Now, if there is one country more addicted to crime, and more obnoxious to the power set in authority over them, than another, that country is Ireland, in the capital town of which the archbishop holds his episcopal court. Why he should pass over this scene of murder and irreligion, where it is his peculiar duty to be active, and wander to New Holland, where the inhabitants

are comparatively civilized and virtuous to the Irish, must be left for his own explanation. Without doubt, as soon as the colonists in New Holland feel themselves strong enough, they will follow the example of the North Americans; but this must, in the very nature of things, be at a very advanced period of their history, and the tocsin of alarm need not yet be sounded for ages to come. In the meantime, let us go on to people a fine, but unoccupied soil, the accruing advantages to the mother country being, first, the converting a multitude of wretched outcasts into useful and productive labourers, and large consumers of British produce, employing British shipping, creating an extensive market for British goods. Secondly, by transportation the ends of reformation by punishment is fully attained—so much so, that not one in ten thousand have any desire to return; nor do the inhabitants of the colony wish to part with them; affording the best of all possible proofs that those who were mischievous members of society here, are useful there. Thirdly, that it is the only plan ever yet invented by which the vicious can be disassociated. At home, whether they are in prison, or out of it, the work of corruption goes on; in the colonies, they are spread over a large surface of country, and yet the ends of punishment at the same time are attained; and a consideration, above all others to the true philanthropist is, that the innocent (their posterity) is provided for, and crime in another generation averted: and fourthly, that all this can, under an amended system of economy, be accomplished at a cheaper rate than by keeping them at home. The Penitentiary at Milbank alone cost upwards of one million sterling in its erection, and now annually more than the colony of New South Wales, even where there is much mismanagement and extravagant expenditure of the public money. In every page does the archbishop mistake facts. At p. 150, he says, “If all the criminals, annually convicted in England, were punished in the country, neither during their punishment nor after their liber-

ation, could they become an important class in the state. They would bear so small a proportion to the whole population, and would be spread over so wide a surface, that they could produce no sensible effect on the rest of the community. But when all the convicts of a large nation are collected into one place, and that place a new settlement, in an uninhabited country, in which the number of free settlers is inconsiderable, they assume a different aspect—they herd together; not only do they form a class, but the most numerous and powerful class in the society—they support one another in vice by their mutual countenance and good offices; and at length, when a sufficient number of convicts have served their term, and been emancipated, they form a political party, having its own opinions and organs of communication with the public.”

Now, the very reverse of this is the fact; in England all the criminals associate, they herd together in large towns, particularly the metropolis, where whole neighbourhoods are filled with them; public-houses in abundance are entirely supported by them, as a proof of which it is only necessary to state, that Middlesex, which is less than one-tenth of the nation in population, has more than one-fourth of the national crime. But in New South Wales they are, from the very nature of their employment, (agricultural,) spread over a surface of land already occupied, to more than ten times the extent of England; and when they become emancipists, in that country, honesty is more profitable than dishonesty. As to the political opinions of the emancipists in their second generation, which Major M'Arthur says are not unworthy of notice: “Republican sentiments are in active operation. It is made a merit among the lower orders to treat their superiors with disrespect; and there appears already the germs of a wild democracy.” The reply to this is, that these observations will equally apply to the mother country, (particularly to Ireland,) or to France, as they do to New South Wales, or to any other colony. Such a paroxysm of alarm, however,

has the archbishop's imagination wrought in himself, that he seriously, in page 202, recommends that we shall bring all the convicts back to this country, in violation to the old adage, that "charity begins at home." "If, then, the question be, what can be done for this colony? begin, I should say, by breaking up the system; begin by removing all the actual unemancipated convicts. I do not undertake to point out the best mode of disposing of these; but let them be brought home, and disposed of in any way, rather than remain. There is no chance for the colony until this preliminary step be taken." The absurdity of this proposal can only be equalled, by further recommending that the soil and standing crops of the country should be shipped with them. I have felt a strong desire to go through this work, page by page, and expose the unsteady and unstatesmanlike measures therein propounded; but as it would here occupy too much space, I am for the present constrained to part company with this writer.

### SECTION III.

*Delinquency increased unnecessarily by the number of petty enactments against crime.*

IF a large number of beings in this country are become reckless, not less so has been the legislature in carelessly increasing the enactments against crime, or the magistracy in giving them force. Our returns of delinquency have of late years been augmented twenty-five per cent. by injudicious legislation, by petty enactments against petty crimes. The demon of law-making has ridden triumphant over those, whose friend the world is not, nor the world's law. The *legislandi cacoëthes* has multiplied crime in this country as

much as any one other cause. In a report recently published by "The Society for the Improvement of Prison Discipline," page 33, is this very just remark; "Much, however, of the apparent increase in the number of prisoners, arises from other causes than those connected with the advance of crime. Offences which were formerly passed over are now made the occasion of frequent commitment to gaol. The malicious trespass, and petty assault acts, the law for paying prosecutors their expenses in cases of misdemeanor, and the numerous local acts for large towns, have tended to fill the prisons, without a positive increase of serious offences." It is a serious affair to send a member of the state to prison for the first time on slight causes. Our rulers will not believe it, for the demon of obstinacy also possesses them; but I repeat, that punishment has the most efficacious restraining power over those who never endured it. Familiarize a man to dangers and pain, and you lessen its horror; it is a dangerous experiment to send a man once to prison if it can be possibly avoided. In every case of wanton and unnecessary committal the law may be said to make for itself a victim, and if all such cases were collected and published the world would not be a little astonished. I remember the case of a little master shoemaker, who was committed, and suffered six weeks' imprisonment in Newgate for stealing a heel-tip, value one penny. He purchased at a shop the articles used in his trade, (a grinder's,) and on one occasion, was found to have in his basket a heel-tip more than he had ordered, or paid for; on this charge a magistrate was silly enough to commit him; the grand jury, however, ignored the bill. The man lost his character and his little trade, and the probability is, that with it he lost his principle, and subsequently became criminal. The evils of prison contamination, and careless commitments, cannot be better illustrated than in the case of two females, the truth of which can be established beyond a doubt. Two young girls, who were brought up in the workhouse at Dorking, Surrey,

were for a long time pressed by the master of the establishment to join a party of abandoned females in a house of ill-fame in Shire Lane, Fleet Street. This horrible wretch, it seems, made a profit of supplying the house with girls. On this occasion the girls resisted all his flattering offers, until at length he rendered their lives perfectly miserable, and they ran away from the workhouse, and sought shelter under the roof of an old woman, a cottager, a few miles from the town, to whom they told their tale. The following morning they were apprehended, and charged with having stolen the clothes which they wore, being the property of the parish. For this offence they were committed for a time to prison; the master of the workhouse, however, being a competent judge of prison influence on the morals, did not abandon his victims, but on the morning of their liberation placed himself outside the prison from whence they were to be liberated, and succeeded without much difficulty in his object, both the girls in question being a few weeks afterwards regularly on the *pavé*.

The committal of boys, to associate with adult criminals previous to trial, is another fruitful source of the increase of crime. When committals are absolutely unavoidable, a place of separation should be provided, and those but partially involved in crime sequestered from the old offenders, and a competent and responsible person placed in authority over them, who should be required to make reports regarding their characters, &c. Innumerable cases occur, in which many might, in the early stages of derilection from honesty, be recovered to society, and further mischief prevented. Under the present system, crime is progressively increasing, as the under table will show. Slender hopes, however, can be entertained of any diminution, until the real causes of the increase be duly appreciated by the legislature.

In 1829 the number of criminals committed in

England and Wales was . . . . . 18,675

In 1823 the number were only . . . . . 12,263

Increase in England and Wales . . . . . 6,412

In 1830 the number of commitments in London

and Middlesex was . . . . . 3,390

In 1817 the number were . . . . . 2,686

Being an increase of 26 per cent. . . . . 704

Showing that what I have so often repeated is the truth, viz. that there is a regular body of standing delinquents in London, which every year are adding a small increase to their numbers, and that the fluctuations of trade, and other national circumstances, do not affect this body, as is the case in manufacturing districts. Now, observe the increase in twelve counties.

Counties.	In 1815.	In 1817.	In 1823.	In 1829
Lancaster - - -	959	1,946	1,632	2,226
York - - - -	355	748	624	1,291
Warwick - - -	277	624	437	705
Gloucester (including Bristol) - -	285	608	406	620
Somerset - - -	221	439	380	674
Chester - - - -	160	285	249	542
Stafford - - -	154	425	214	613
Nottingham - -	121	191	196	358
Derby - - - -	57	165	86	175
Wilts - - - -	108	229	263	346
Worcester - - -	130	239	173	282
Durham - - - -	49	87	71	139
	<u>2876</u>	<u>5,986</u>	<u>4,731</u>	<u>7,971</u>

Thus we see, that from the transition from war to peace, and the consequent want of employment, from the cessation of trade, and the disbandment of a part of the army and navy, that in 1817, crime increased to an alarming degree, the whole committals in that year, in England and Wales, being . . . . . 13,932

In 1815, the number were only . . . . . 7,818

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Being an increase of about 80 per cent. . . . . 6,114

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But when trade in a measure revived, in 1823, the number of committals in the twelve counties above given was diminished by upwards of 1200. In 1829, however, after a period of several years of bad trade, the committals increased in these counties 3,240, the difference between 1823 and 1829. Now, through a period of thirteen years, viz. from 1817 to 1830, the commitments in London and Middlesex increased only 704, proving beyond all controversy the existence of a fixed body of criminals, whose increase from natural causes keeps pace with the removals by the law, *i. e.* death or transportation. To compete with this body, the legislature have, from time to time, augmented the number of our penal statutes, and increased their severity, by which casual offenders have been more hardly dealt with than their crimes merited, and the habits of the lower classes much brutalized and soured by unnecessary and unjust severity.

In a pamphlet recently published by the committee of the Society for the Improvement of Prison Discipline, page 33, are these remarks:—"Much, however, of the apparent increase in the number of prisoners arises from other causes than those connected with the advance of crime. Offences which were formerly passed over are now made the occasion of frequent commitment to gaol. The malicious trespass and petty assault acts, the law for paying prosecutors their expenses in cases of misdemeanor, and the numerous local acts



for large towns, have tended to fill the prisons, without a positive increase of crime of serious offences." Many legal statutes are constructed with no other view than to protect the rich from punishment, against the poor. In the assault act the magistrate is empowered to give summary decisions: a poor wretch is sentenced to pay a fine, when he has not a penny in the world beyond the proceeds of his daily labour; he is then sent for two months to prison, whilst his unhappy and miserable wife and children must steal, or starve on parish fare. This act has made as many offenders in one year, by contaminating men in prison society, and rendering desperate their families, as the other laws can suppress in the same time. This result, it is true, does not take place in the self-same year, because it requires time, after one family commences the practice of delinquency, before they become incorporated in the regular body of criminals; the members of each family, however, not only multiply, but each one, after having himself embarked in crime, seduces others. Now, for the very same offence, the like fine is inflicted on a man possessed of a splendid income. A sum of forty shillings or of five pounds (the highest penalty) is no object to him—he of course pays it at once; and to make the absurdity the greater, the money is not given to the party injured, but to the king. Thus is this act made to operate as an immunity for the monied ruffian, who of course is highly gratified in having the privilege to beat any of his majesty's liege subjects on payment of a small mulct. Under this execrable law, which originated with that superlative legislator, Mr. (now Sir Robert) Peel, a magistrate can actually prevent a complainant from obtaining redress either by action or indictment; since, on his granting a certificate to the offender that he has been fined, to how small an amount it matters not, no action can be brought, no indictment can be preferred against him. When one law is made for the rich and another for the poor, justice is violated at the fountain-head, from

whence it ought to flow pure and uncorrupted ;—fatal are the consequences to society ; disgust supersedes respect, from the peasant through all classes not included among the aristocracy of the country. Many local acts are of a more atrocious nature, and consequently manufacture criminals more rapidly. It should be the great aim of all governments to diminish the causes by which persons may be committed into “ safe custody :” in proportion as the legislature increases enactments against petty and venial offences, so will the numbers ever be found to be augmented who commit more weighty crime. No axiom in Euclid can be more clear and demonstrable than this legislative fact, and which appears to have been entirely overlooked by our law-makers. In petty cases, it is not prison contamination which does the mischief, as generally so understood. It is sheer nonsense to talk of contamination, when speaking of the habitual delinquent ; he is already corrupted to the core, and his very “ heart of hearts” is dyed with crime ; he cannot become worse but by habit, and never will be better till placed in another state of society, where opposite habits and manifest interest must co-operate to bring about a change, if not in his nature, in his practical conduct. But when a petty offender is committed to prison for one or more months, under some ill-advised local act, or for trial, it is the feeling that he is now disgraced, and that if he comes there again, he whispers to himself it shall at least be for something more worthy of punishment. In this state of mind he perhaps remains for several months in total idleness, which generates a permanent indisposition to further labour, although he may, up to the time of his entering prison, have been a very industrious man. If his sentence be hard labour, and the offence petty, the mind takes a turn of exasperation, under which feeling he resolves on a course of desperation. If *humanity* rejects the consideration of the feelings of men who commit some petty offences, *policy* peremptorily bids us to

study them ; both, however, unite in demanding an attention, in making laws in accordance to the nature of man. The following case may in some measure explain my meaning, and show the effect of severity and leniency. A clever, but notorious young thief, was taken to Oxford races by a gang, where, under some charge of crime, he was committed for two months to prison by the mayor ; here he associated with a poor countryman, who had been committed under some very hard circumstances, which so affected him, that he never ceased complaint, not even in his sleep. It happened that the man and the boy were discharged the same day from prison ; the boy being pennyless, and wishing to get to London, knew he must immediately *sneak* for money ; he therefore gave the man such a flattering account of his talents, that he induced him to accompany him (the boy) on adventure to London, with a full intention to commence in regular practice. On the road they both were taken up for an offence committed at Reading on the property of a Quaker, who again recovered it, but instead of prosecuting the thieves, went and told them he should not appear before the magistrate when they should be brought up ; he further heard the countryman's story, gave him good advice and some money, which so operated on the mind of the man, that he left the boy, went home to his own village, pursued an honest course, subsequently married, and remains there to this day, having established the character of a hard-working, honest man. I have never seen an instance of a poor man who has been locked up in prison for any length of time, and remained there in idleness, who was not so indisposed to return to labour, as to amount to an abhorrence of it. How this *vis inertia* is produced it is difficult to explain, unless it be want of air, and spare food ; few, however, recover a disposition to labour after these causes are removed. All considerations on crime may therefore be waived until we have accomplished two objects, the condensation of which

may be laid before the legislature in two propositions, viz. first, to lessen the number of committals for petty crimes; and secondly, to effect a more speedy gaol delivery. The first can only be brought about by repealing all the petty and vexatious laws against the poor man, both general and local; and to grant to the magistracy an extension of the power of taking bail, which might be done without any injury to the public. Ancient jurisprudence recognized the principle of taking bail in all charges of crime, not excepting even that of murder, on the presumption of all men being innocent until convicted by a jury of their country; by admitting more liberally to bail in cases where the party turns out to be innocent, personal injury is avoided, whilst the public interest is but slightly risked; besides, many crimes are punished with confinement before trial much longer than the judge would, if tried on the first day after committal, have sentenced the prisoner for; sometimes it does happen that the presiding judge takes the previous confinement into his consideration, but this is not a uniform rule; and it must be remembered that the judges, in passing sentences, cannot altogether forego punishment, although the imprisonment before trial exceeds what they would have given in full, for fear it should go abroad that the offence was not deemed heavy enough by the bench for any punishment, and thus hold out inducements for others to offend. The necessity of a more speedy gaol delivery has at length occurred to the Middlesex bench of magistrates, Sir George Hamson having recommended, at a recent meeting, that an application should be made to the secretary for the home department to forward this object. An immense number of committals throughout the country are made under the vagrant act, 5 George IV., by which the magistrates are empowered to commit "idle and disorderly" persons to prison, and on their discharge to grant passes to forward them to their respective parishes. Now it would be much better if the magistrates were authorized to

pass in the first instances, without any committal to prison ; at least, that they should have the discretion of an election of the two evils. A consolidation, however, of the poor laws would obviate the necessity of moving them at all, and be a saving to the country of an appalling sum of money, which is now expending in litigating the rights of settlement. There cannot be a greater blot upon the government of any nation than allowing such a waste of money. And in very many cases, acts of cruelty are perpetrated under the sanction of law, which authorises overseers to drag dying persons about the country until they expire on the road. The absurdity of such a system cannot be better shown, than by stating the fact, that in many populous parishes, after the expenditure of astounding sums of money annually, in litigation on both sides, the exchange of paupers is nearly equal, leaving both parishes just where they were, supposing no disputes to have arisen, excepting only the loss and profligate waste of the parishioners' property.

#### SECTION IV.

*Rancorous feeling of the Poor. The punishment of Embezzlement ; and the necessity for the institution of Courts of Summary Punishment.*

It is unquestionable, that much crime emanates from the hatred with which the poor are filled for the rich, and the detestation in which the laws and institutions of the country are generally held by the majority of the population. The wealthy have an idea that their slavery is sought by the people, and they (the wealthy) in their turn seek every op-

portunity to coerce the poor ; the question is, who shall make the first concession—shall the poor patiently starve to gratify those whom they contemplate as the cause of their poverty, or will the rich cease to aggrandise to themselves more privileges? *Nous verrons!* In the interim let every man individually do his duty, and fearlessly state facts as he finds them, in full assurance that a time will arrive, when justice and truth must prevail. Good sense is predominant in this country, but all is sacrificed to party. The act of parliament which made embezzlement punishable with fourteen years' transportation was only passed when a member of the aristocracy suffered by the offence.\* Embezzlement, or breach of confidence, is certainly a heavy crime, and deserves condign punishment ; but under this act the judges at the Old Bailey have perpetrated horrible deeds of cruelty. The act was intended to protect the property of masters from the depredations of their servants, but how does it do this? By inflicting the same punishments on the well-paid clerk and confident of a banking-house, who robs the firm of 100,000*l.*, as it does on the poor man who embezzles the price of a pot of porter. In all cases of embezzlement the offenders must be viewed as differing from the abandoned felon ; and were it not that the protection of property demands some signal punishment should be inflicted on those who betray the trust reposed in them, imprisonment for a short period, with seclusion from all society, would be the best course for the law to adopt in these crimes. But it exclaims, We must sacrifice for example's sake ! This necessity I deny, in this particular crime. Probably not one offender in a thousand, who embezzles his employer's property reflects for a moment on the result, or makes inquiry to ascertain whether the consequences of detection will be restitution or loss of life. In most cases the crime incipiently presents itself as no crime, each saying to himself,

\* Sir Thomas Plomer lost 20,000*l.* by his broker, or agent, on which the act of parliament bearing his name was passed.

I will borrow this sum, *only* for a short time, without my master's knowledge. Having done this once, the possession of money increases his extravagance, and confuses his mind, which soon leads to further need of supply ; the offence is repeated a second or third time, till all hopes of repaying the amount are lost : they then become desperate, by a reflection that in a few careless days, or weeks, they have lost their position in society, and irrecoverably disgraced themselves ; legal punishment even now is the last consideration, only being dreaded as it ultimately exposes their true situation of guilt, and leads, after all, to the real punishment, namely, loss, of the good opinion of those whom they most valued—the reproachful eye of a parent, and perhaps the loss of the heart of one sincerely loved. In cases of embezzlement the dread of losing these blessings are the restraining terrors, and when committed, the loss of these are the expiations of the offence.

“ To place and power all public spirit tends,  
In place and power all public spirit ends ;  
Like hardy plants that love the air and sky,  
When *out* 'twill thrive, but taken in 'twill die !”

It is all a war of station and power ; virtue is nowhere respected for its own intrinsic worth, neither is justice to all men now considered an essential in law-making. I, however, find no fault with the punishment of fourteen years' transportation in very flagrant cases, when robbery of a friend is but too frequently blended with gross ingratitude ; but I would have such offenders very carefully kept from the common herd of prisoners, until they arrived at their destination in the colonies, when they may be allowed, under their sentence, to take their chance with other convicts, in being placed out for employment. Granting, then, that heavy sentences are called for in cases of embezzlement, I ask, why should our criminal tables be swelled, and the country be

put to expenses, to convey men to the opposite side of the globe, leaving their families for the public to support, for a sixpence or a shilling—crimes which occur often in a fit of intoxication, and often intentionally when sober, (and sometimes otherwise,) in the acts of carters and porters? The monstrosity of this law is so glaring, that it could not for a day be tolerated in any other country. If I have on former occasions been puzzled to select the most appropriate cases for insertion out of a number, the difficulty is here increased a hundred-fold. Under this act the injury inflicted on individuals, and through them on the country, are tremendously awful.

I have, in my own experience, known fifty men transported for fourteen years, on charges so trifling and ridiculous in themselves, as to excite, in all persons acquainted with the cases, ineffable contempt, both for the law and the judges who enforced it. Conceive a man of sixty years of age, having all his life borne a good character, sentenced to fourteen years' transportation for embezzling a shilling, in rendering an account of several pounds to his employer; and such cases occur every session at the Old Bailey. To say nothing of the injustice of this practice, look at the extreme folly of it!—the expense to the country—the reducing in many instances large families to poverty and crime, thereby injuring the community instead of benefiting it. Many are deemed guilty too, under this law, wherein the *animus* was any thing but criminal; not a few have suffered for appropriating to themselves emoluments which they deemed perquisites, their predecessors having done so with impunity before them. One family was ruined under the following circumstances. A cheesemonger who became a bankrupt, having a large chandlery connexion round London, to support his family engaged himself to a wholesale house to sell goods for them to his former customers, agreeing for a per centage on what trade he brought to the house. After being with the parties



for some months, a dispute arose as to the allowance of percentage, whether it was general on all goods sold, or only partially so. The man was very irritable, and, under an impression of a real or supposed attempt to impose on him, he flew into a rage, and left the house, saying, before all the shopmen, aloud, "Mind, I am possessed of twenty-four shillings, received this morning from Mr. —, but until I am paid my fair demand I will not give it up." He was subsequently tried for embezzling this sum, there being no attempt to impute any other charge against him, and sentenced to fourteen years' transportation, no part of which was ever remitted in this country, or in the colony, that I have heard of. Reverting generally to the number of petty offences, which are visited with heavy sentences by the judges at the Old Bailey, as well as under the embezzlement act, and, considering again the importance and magnitude of the question, how are we, without injury to society, to diminish the number of committals in Middlesex? Summary punishment appears to be the only remedy. I will, therefore, suggest that four courts be established; one near St. Pancras church, in the New Road; another near Charing Cross; one in the city; and a fourth in Ratcliff Highway; to which a fifth may be added for the Borough. At these courts three magistrates, or one summary judge, should preside six hours every day, and decide at once on all cases sent for their adjudication. The next question is, what kind of offences shall be deemed fit for the cognizance of these courts: this of course must be settled by the legislature, who should pass an act of parliament, defining the offence and amount of property stolen or embezzled, &c. &c., under each species of crime. It will require the agency of great experience and consummate knowledge on the question of crime, combined with profound consideration, to lay before the government a well-digested scheme of jurisprudence for these courts to act on.

Whatever may be the offences assigned for the adjudication of these courts, they should be published in one book, entitled “The Petty Criminal Code of Laws,” at the lowest possible price, that they might be universally read. Preambles should be avoided, and the laws should be written in a plain and simple style; the expressions should all be direct to the purpose. Montesquieu says—“Princes are made to speak like rhetoricians. When the style of the laws is turbid they are looked upon only as a work of parade and ostentation.” It is an essential article that the words of the laws should excite in every body the same ideas; simplicity of language only can do this. Were I to attempt to suggest what crimes ought to be included in this code, it would require a particular work to itself. I may, however, remark, that the measure would in no way interfere with or disturb the present police arrangement, as it would be the duty of police officers to convey all persons charged with offences, as heretofore, before a magistrate, who, on hearing the charge, would, under the act, determine whether the case ought to be sent to a major or minor court; and if an offence for the latter, order the prisoner to be removed to the sitting court for a trial. The witnesses would, of course, at once attend, and an immense waste of time be spared them: no bill of indictment would be required, no grand jury to determine on *ex parte* evidence, whether the prisoner should be put on his trial or discharged; under this summary and improved mode of punishing petty offences, one half the county rates might be reduced. Although it would be necessary to limit the amount of theft to a money price, for the cognizance of this court, still certain crimes must form exceptions regardless of amount. Such as all crimes committed on the person, House-breaking, forgeries, and swindling, &c. &c. &c. The number of boys committed to prison in and about London for trial, who are not in the habit of crime, exceeds belief: in cases where only a sixpence has been purloined, all the forms and

expenses of the laws must be gone through, the same as in a case of life and death; besides, by prison pollution, making those *wholly* bad who were before only *partially* so. The following case will show one species of offenders to which a summary punishment would be applicable. A shopkeeper's boy put his hand into his master's till and took out one shilling; the master, from the counting-house, saw the action, but did not know what was taken out; he, therefore, immediately took him into the counting-house and searched, but could find nothing upon him. There were a brace of loaded pistols hanging up in the counting-house, and the shopkeeper, in his rage at being outwitted by the boy, threatened to "blow out his brains," unless he confessed what he had done with the money, on which the boy brought the shilling from his mouth: for this offence he was committed to Newgate, where he was six weeks, at the end of which time he was thoroughly initiated into all the arts and mysteries of crime. As there was no evidence to convict him but his own confession, which was extorted under a threat of instant death, this fact, through counsel, was made known to the court, and he was acquitted; since which he has committed some crime of a more public nature, and is now transported. The prosecutor says he never had a better boy, with the exception of that act, (the stealing a shilling,) and now reproaches himself with having so intemperately prosecuted the boy, and thereby making him what he otherwise never would have been, viz. a public thief. Had there been a summary court open this serious mischief could not have occurred. The boy would, in all probability, have had a punishment awarded him commensurate with the offence, and the master, when cool, would have been induced to give him another trial. This case is not cited as being remarkable, but to show succinctly the character of offences (and of which there are hundreds every week occurring) to which a summary court would be applicable. More need not be said to those who are en-

gaged in punishing crime. To the observation of Montesquieu, “ There are criminals, whom the magistrate punishes, there are others whom he reclaims,” may be added, There are some who are not previously, of whom the magistrate makes criminals.

The following table is an average of three years expense of prosecutions in the metropolis:—

	Felonies.		Capitals.		Average expense of prosecution for each person.		
Old Bailey, in 1829	1,726	.	226	.	£4	10	0
Clerkenwell	139	.	.	.	2	5	0
Old Bailey, in 1830	1,777	.	231	.	3	10	0
Clerkenwell	194	.	.	.	2	0	0
Old Bailey, in 1831	1,846	.	250	.	3	15	0
Clerkenwell	155	.	.	.	2	10	0
Average at the Old Bailey		.	.	.	3	18	4
Ditto at Clerkenwell		.	.	.	2	2	4
Total cost at the Old Bailey					£21,903	2	4
Ditto at Clerkenwell					1,199	1	8

By the institution of summary courts these expenses would be considerably reduced, besides many other advantages which might be named.

The proposition, however, may be said to be an apagogical one; no one will pronounce it to be absurd if its full utility be not directly shown: some good effects are certain to accrue from the adoption of the plan, namely, speedy justice in petty cases, which form a large portion of our criminal calenders. A great diminution of expense in prosecutions, and the support of prisoners, retained in places of confinement before trial, and, moreover, the subduction of much prison contamination, which may, indeed, be altogether obviated, under the proposed system of prison discipline, recommended by the committee on secondary punishments.

The plan proposed, advises that when criminals are in prison for punishment, that they should sleep in separate cells; also, work and eat their meals in silence: consequently, those petty offenders who shall be sent directly from the courts to punishment, would escape vitiation from criminal companionship; and none but those charged with offences of great dye would have an opportunity of association whilst awaiting their trials. These are no small points gained, if we are to believe that prison contamination is as fatal as represented. For my own part, I devoutly wish the experiment to be allowed a trial, feeling assured that the country would have reason to be grateful to the legislature for the measure.

#### SECTION V.

##### *On the American System of Solitary Confinement.*

THE parliamentary committee on secondary punishments have recommended some very important alterations, and it is to be lamented that this branch of the subject has not yet attracted their notice. The prison discipline in America appears to have engaged much of their attention, and they recommend the adoption of a similar plan of solitary confinement here. I am decidedly impressed with an opinion, that partial solitary confinement will, in this country, not only do much towards deterring men from crime, but something towards reformation, which I believe has never yet, in the smallest degree, been accomplished. The convicts on going to rest ever talk of their pardons soon coming down, and fall to sleep offering each other bets regarding which of them will first obtain his liberty.

As punishment became more mild, clemency and pardons became less necessary. Clemency is a virtue that ought to shine in the code, and not in the private judgment. The prince, in pardoning, gives up the public security in favour of an individual, and by the exercise of this species of benevolence proclaims a public act of impunity. Let the executors of the laws be inexorable; but let the legislature be tender, indulgent, and humane.—*Beccaria*, cap. 46.

It is very extraordinary that it should never have occurred to government to make pardons and commutations available to the public, whilst the practice of granting them continues. They should exact from all to whom these favours are granted, a discovery of all their accomplices, and the robberies or other crimes they may have committed. In the case of a convict, who is under sentence of death, this should always be made a condition of sparing his life, by which others would be deterred from crime, a measure which probably would effect this object more surely than any hitherto suggested. If this precaution were used, in a very short time all public offenders would be known to the police, and be under proscription, and those at large who were not actually pointed out, being made acquainted with the practice, would become so much alarmed as to dread detection every hour of their existence. Proper officers should be appointed to take down in writing the statements made by convicts, and a good system of arrangement for the particulars in books instituted.

In almost every case after a man's conviction, his former companions fail to render that pecuniary assistance which the convict expected, and to which he thinks himself entitled. This disappointment generates a spirit of revenge; and, under feelings of resentment, many are at times very much disposed to make disclosures of importance relative to their companions, and the crimes they are in the habit of committing; but there is no one at hand when they are in this temper, to take advantage of their disposition, but the keeper,

who, for many reasons, is an improper person to perform this duty. Through the medium of criminal boys, after conviction, much crime might be prevented, under a properly constructed establishment. This is a hint, I can with confidence assure the authorities, which is worthy attention.

It appears from the testimony of Captain Basil Hall, R.N., that perfect as he describes the American prison discipline to be, yet "there is a gradually increasing culprit population growing up in America, of which the legislation cannot rid the country. These men, who may almost be called the penitentiary population, run the round just as I have observed with respect to the bridewell at Edinburgh; the same men come and go, round and round again." Well, then, nothing is accomplished in the way of reform, even under this lauded plan, which aims at the twofold object of efficient punishment and reformation, by enforcing reflection. Their error, and consequent failure in producing the good they expected, I conceive arises from their having neglected to adopt any plan for the improvement of the prisoners when they have separated them. They work, it seems, every day for years in silence, without intermission, except the time allowed for meals, which are always taken in solitude. The Bible is the only book allowed them—no paper nor pens; and this is called giving them habits of industry. I should say nothing can be more calculated to disgust them with every description of work all the rest of their days. If you can beget habits of industry, with a proportionate improvement of the mind, and an increased sense of the moral duties, which will bring right notions of *meum* and *tuum*, then habits of industry are of the utmost importance to the prisoner; as through these habits only can he obtain his bread, when brought to that state of mind which makes him prefer honesty to roguery. This can only be brought about by reflection, it is true; but I am afraid the term reflection, as here applied, is used in a very abstract sense. If it be meant the culprit should reflect

on his having done wrong, I answer, this he always does, under any punishment, however slight: he cannot but be aware of the cause which places him under coercion, and regret it. This kind of reflection only makes him more sorry for having been detected in his crime, than for having committed it. To reflect with advantage in solitude, there must be some materials stored in the mind; or books must be read to furnish these materials: if these be supplied, however unwilling a being may be to reflect, no mind will be long able to resist the temptation of mental employment, if in continual solitude. But if a mind, totally void of sources of reflection, be shut up in a cell for years, or even for months, what can be expected but that every day will stultify its powers, and at last render it callous and unimpressible; or in the end imbecile, and so weak as to be irresponsible for its own acts? The Americans do, it seems, in their solitary penitentiaries, teach those under twenty-five years of age to read who cannot; and there they leave them. This is a most important subject, and in order to aid in calling the attention of government more particularly to it, when the report of the select committee shall come before the house, I make these observations.

It appears, from an intimation given in the House of Commons, through the secretary of state's office, that some person or persons are now in America, authorised by our government to examine into their system of prison discipline, and report thereon; I cannot, therefore, refrain from offering a few remarks on the probable effects of solitary confinement, in which lies, it seems, the *gravamina* of their newly-invented system. On this question (solitary confinement) I shall, by way of *prôem*, say that much good may be extracted from its adoption in this country, and also much ill. It is an active medicine, and requires great skill in its use. The object in all punishment ought to be (the individual only considered) the moral improvement of the mind; this is never attained by the indiscriminate association of criminals: if an improving



thought flits across the mind of one, the remembrance of it is obliterated by the jeering of a companion; and the whole body of criminals having an indisposition for reflection, society, under any circumstances, is to them a happy succedaneum for it; they cannot, therefore, be too soon deprived of this resource. But in doing this, let us reflect on what is their present state of mind, and on the probable consequences of a total seclusion from all, save their own thoughts. And here let me premise that the mind requires softening and ameliorating, not hardening. Partial solitary confinement, under judicious management, may accomplish this *desideratum*, more particularly during the night; but let not the criminal be led to consider it so much a matter of punishment, but let him feel that the necessity of his own improvement requires it. Further, we must consider that he is unpossessed of any materials for thinking; these must, therefore, be furnished him in books, each, according to his capacity, for reading at leisure hours, which should be allowed him for the purpose. The books best suited to this purpose will be those of an instructive nature, and which are not wholly divested of some kind of interest or amusement. Hitherto the Bible and Prayer Book have been the only works allowed to be read in penitentiaries, and these are generally supplied by the county. I am aware there is a great prejudice in favour of an adherence to this rule, under any amended system of prison discipline; and that the man who opposes the exclusive use of these books will be, by our pseudo-Christians and saints of the day, virulently attacked as an enemy to all religion. It can, however, be no heresy to say, that there is no magic in these books; nor will it, I presume, be denied that, to a man untaught in all but mere reading, (the state in which all men are found brought up in the national schools,) the Bible will be a mystery, and incomprehensible to him. There is no work extant which requires so much assistance to read with advantage, when first put into the hands of an ignorant person;

but, say the advocates on the other side, there is the grace of God “which giveth all understanding.” But I fear that fanaticism and delusion of mind are but too frequently taken for the grace of the Almighty God; true religion is the result of mental reflection, and can only operate on the heart through the medium of the judgment; let it therefore be our first concern to temper that judgment, that the impression, when it is made, may assume a permanency of character, and not again be easily effaced. A reformation through these means will be real and acceptable in the sight of God, all others evanescent and passing away. With respect to the Prayer Book, its only use to a sinful man in solitude can be to assist him in offering up prayers to God for his forgiveness; but prayers are only acceptable to the Deity when they come from the heart, and when he who offers them is truly penitent, and then any words will answer the purpose, if it be only, “God be merciful to me a miserable sinner.” The Prayer Book then can answer no purposes in promoting mental reflection; and if it be put into the cell as an amusement, any book, having words promiscuously arranged in it, would answer the purpose for the prisoner to fix his eyes upon. I would fain have passed over a subject so very delicate in its nature, that few can make any observations thereon, without drawing upon himself a host of assailants. But the subject is one of importance; we are about to inflict a chronic punishment, let us at the same time be careful that we do not inflict a chronic disease—a paralysed *cerebellum*—a petrified heart—an incurable rigidity of the nervous system; a state in which the culprit may be brought to say,

“The past is nothing, and at last,  
The future can but be the past.”

Now, if we shut up a man in solitude by night, and compel him to remain silent all day, we should compensate him by giving him something to think about, for I suppose the work

he will have to perform can only be that of a mere manual kind; as regards the mind, therefore, the day will be as bad as the night. If the mind be not supplied with food, and the man undergo any very protracted solitary imprisonment, he will become a mere animal, being divested of his rationality, and this, be it remembered, is your substitute for death—"relaxing the laws"—"secondary punishment," &c. &c. Should the effect I have anticipated be the consequence of solitary confinement, where shall we look for primary punishments? Let us suppose that books of a various nature are, without comment, placed in a culprit's cell, (of course selected with due care,) will not his solitude constrain him to read, and will not the silence imposed on him during the day compel him to reflect; and what subject so likely to engage the mind as that last read by him? There will, of course, be appointed a clergyman, or some other person, to perform his duty; and it should be their business to make hebdomadal visits to each convict, and make themselves acquainted with the state of mind in which each man entered on this probation of punishment. If, on the second or third visit, the man in any way alluded to the comfort allowed him in having books, it should immediately become the object of the visitant to ascertain whether the prisoner had possessed his memory of the matter contained in them; if he had, they would of course become subjects of future discussion, and thus form a gauge by which the progress and state of mind, in every stage, might be measured, to the end of their incarceration. The acquisition of every new moral idea should form the basis for inculcating the principles of religion, not abstractedly, but incidentally.

"One clear idea, wakened in the breast  
By memory's magic, lets in all the rest."

A very few months' solitude, managed in this or a somewhat similar manner, would, I can venture to predicate, make new

men of all, but those who belong to the nation of delinquents.

The American system is very much lauded, and certainly claims our attention, but, with all, be it remembered that they have a rapidly increasing criminal population, which they ascribe to the want of a penal colony to which they may transport the most desperate of their offenders. It is curious enough to observe, that while they (the Americans) are lamenting the want of one, that an archbishop should write a book for the express purpose of proving that our penal colonies have been the cause of crime in this country. The failure of the American system in repressing crime, I believe to be wholly attributable to their non-provision for mental exercise in their penitentiaries during the hours of solitude, by which the mind becomes stultified and indurated, sometimes imbecile and so weak as to amount to idiocy; in all which conditions men are careless of consequences, and ready for crime: but improve men, and render them of more value to themselves, then will they have a regard for their own actions, and consideration for their fellow men. It is worthy of remark, that many commit crime from want of knowledge, and that many more would be equally criminal had they the knowledge which men long engaged in crime possess. It is from these causes that prison association is hurtful; the one who, if he had any other instruction, would avoid crime, receives none in prison: the other, who only wanted a particular species of knowledge to make him a thorough paced rogue, acquires all he stood in need of in prison association. Under the proposed plan of solitude with the aid of books, both these evils will be efficiently met, through the direction of able assistants, but in nothing which regards the improvement or condition of the prisoners should the gaoler ever be consulted; this is one great error the parliamentary committee and the benches of magistrates in general fall into. My reason for making this remark cannot be better explained

than by quoting the language of Mr. Sheil, when speaking against the punishment of flogging in the army, in his place in the House of Commons: he said, "He should be loth to ask a clergyman's advice as to the best mode of confession; he would be loth to take the advice of a planter as to the best mode of treating a negro; he would pause ere he consulted a person of his own profession as to the best mode of legal proceeding; and, above all, he should hesitate to consult a military man as to the nature of military punishment, and the best mode of administering it; because the very best and most humane become, from habit, possessed of a bad and indurated feeling." If men, whose savage natures are softened by education, are liable to become hardened by habit, what must be the condition of gaolers! I am convinced, from all that I have read, that government and others have at all times been much misled by consulting the heads of prisons, who generally know nothing but what they collect from their ignorant turnkeys about the inmates of the place, except it be their books and perquisites.

The reports on the American system at present are very defective, but it appears that, on some former occasion, an experiment was tried upon eighty prisoners at Auburn; they were kept in perpetual solitude, without employment, for ten months, at the end of which it was abandoned. It injured health, impaired reason, and endangered life; the sufferers were so enfeebled as to be totally incapable of work on being discharged, and the experiment altogether failed. On the whole, it seems that solitary confinement may answer with employment; hence will accrue one fundamental advantage in building penitentiaries, having a separate cell for every prisoner; inasmuch as it will be a weapon in the hands of the judge to increase or diminish the sentence of imprisonment, as regards the punishment, in several degrees. Firstly, entire solitary confinement without any book but the Bible; secondly, with various books, pen and ink, paper, &c. ;

thirdly, with hard labour; fourthly, with productive labour in the cell; and fifthly, partial solitary confinement, with or without any of the foregoing employments. With mild and judicious treatment, and a cell, there is unquestionably a hope yet left, that a man may leave prison better than he entered it, but without a cell none remains. It may be necessary to say a few words on the probable effects of this system on that class called gentlemen convicts: it is pretty certain that the punishment would be greater, or less, as they were allowed books, &c., or otherwise; hence it is an instrument of punishment to an unlimited extent against this class, and might in all cases be substituted for transportation with decided advantage, particularly in cases of first offence, and few others come under the judgment of the court. And the reason why gentlemen criminals are all first offenders is plain,—they are men of some education, and have occupied some place of trust, which they have forfeited by embezzling or stealing the property which it was their duty to protect; having once lost their position in society, it requires a long period of time after they recover their liberty, before they can again induce any person to entrust them with property. When this description of offender is brought to prison, he at first shrinks with horror at the thought of speaking to the open and public thief; although criminal, as far as regards having robbed his employers, the idea of his becoming a general depredator would be as revolting to his feelings as to one entirely free from guilt. In this state of mind, probably, he might ever remain, were it not for association; but watch him for one little week only, while awaiting the recurring session! Coy girls have, by falling into the hands of villains, in as short a space as seven days, been removed from a state of innocence to the *pavé*: so it is with the characters now under consideration,—in a very few days all remains of virtue is lost, and you may behold him cheerfully pacing his boundary, arm-in-arm with the most notorious offender in his yard, greedily learning

all he can of crime, and promising himself, should he escape on the day of trial, the pleasure of having found a new set of acquaintance for association, which will compensate him for the loss of those which have gone with his character. It is, in sober sadness, a lamentable thing that these things should be so. The man I have attempted to describe, had he been sequestered in a cell, probably in a few hours would have acutely felt the enormity of his offence; and under sincere repentance would have made all the restitution in his power, by stating to the injured party how he had disposed of the property, and sending back that which he yet retained in his possession. The losers of property generally now make every effort, both by threats and fair promises, to recover as much as they can before the culprit is committed to prison, well knowing that it will be too late afterwards; but if the prisoner were secluded, and disassociated from other offenders, prison would be the place of all others the most likely not only to induce a disposition to make restitution, but to effect an early remorse of conscience, and thereby prepare him for reformation. The whole of this class of offenders may, under the proposed improvements, be recovered to society at one tenth the expense they are now sent out of it; but the law, and those who administer it, must never lose sight of the character of the prisoner, using gentleness and mildness in all that is done in the way of punishment, always allowing a fair opportunity, under whatever sentence may be passed, for the offender to resume a course of honesty. Cowper wrote, in a letter to a friend on this subject, as follows:—"A man whose vices and irregularities have brought his liberty and life into danger will always be viewed with an eye of compassion by those who understand what human nature is made of; and while we acknowledge the severities of the law to be founded upon principles of necessity and justice, and are glad that there is such a barrier provided for the peace of society, if we consider that the difference between

ourselves and the culprit is not of our own making, we shall be tenderly affected by the view of his misery, and not the less so, because he has brought it upon himself." The passions of men prompt them to wickedness, but the interests of society demand that through the laws humanity should be conspicuous. Although I am an advocate for a great relaxation in our penal code, and an enemy to solitary confinement, if it be used to inflict an aggravated suffering on the person, yet I have no hesitation in saying, as far as my experience and reflection have enabled me to judge, that without the separate cell system be adopted, all attempts at reformation, or rendering the prisoner again to society after his punishment not worse than he left it, must fail. All depends on the treatment of each class of offenders, and the sentences awarded; the judges must reflect with more deliberation than they have hitherto done, on the probable effects the punishment is calculated to produce on each individual coming before them—what is the real character of each culprit—being careful to apportion to all the discipline the circumstances of the particular cases require. They must cease to generalize, but enter as much as possible into minutiae, and co-operate with their judgment in rendering the plan efficient. An intelligent man of good disposition must be placed at the head of each class, subject to the superintending eye of the minister, who should be authorized to withhold or grant indulgences to the prisoners whilst in solitary confinement, any not exceeding the use of books, pen, ink, and paper. My fears are excited lest those who are about to make these important alterations should, through the want of experience, render the measure abortive; my object, therefore, is to impress on them, that in whatever degree an offence may demand extra coercion, that the system must allow those who superintend its execution to interweave some ameliorating measures with the restraints, thus tempering and feeding the mind, while the corporeal body is undergoing an expiation of the offended laws.



I have known many kind-hearted men take into their services individuals, with the knowledge that they have committed crime, under a hope that such confidence would be requited with gratitude, and corresponding faithfulness of service, and I believe generally they have not been disappointed. But I never knew one instance of any being disposed to try this experiment after the man had been committed to prison for the offence—such is justly the strong prejudice against the pernicious effects of prison walls. If under the now proposed improved plan the world can be assured that men who go to prison are rendered better, instead of worse, by the discipline they undergo in confinement, may not some good Christians always be found in society to receive discharged prisoners into their employ? It is to be hoped that there may, if the system answer, and of which I have no doubt, unless it be marred in the experiment, by holding mistaken views of men and the nature of punishment.

Every man who shall be discharged, should have a certificate put into his hand, signed by the minister of the penitentiary, stating his conduct during his incarceration; and if it were made a condition, that he should attend once a week, for a few months subsequently to his discharge, to have this certificate endorsed, and submit to an inquiry as to how he disposed of himself, it would be an excellent check on his first days of freedom, and also information to the authorities regarding the results of the system, by keeping an eye of espionage on them, through officers who might at times be employed to ascertain whether they were in honest employ or otherwise. But to accomplish these objects, after a man is sentenced, you must, as much as possible, substitute mild entreaty and persuasive arguments, for a system of terror. Stripes and public disgrace must be avoided, being useless as to example. Cast no man unnecessarily into the gulf of despair, leaving him without any hope but deperately to war against his fellow-men. These feelings must animate the

new plan, and let the legislature be careful, that in avoiding *Scylla* they do not fall into *Charybdis*. Those who advocate a mild system of prison discipline, are generally answered by being asked, if they would have a prison made a place of enjoyment? and are told at the same time, that many commit crime to obtain the comforts of it. Solitary confinement, with labour, will, I apprehend, remove all objections to kind treatment in these respects, as it cannot be supposed that any man will voluntarily undergo seclusion from all the world for mere bread to eat. But the ameliorating treatment which I advocate, wholly regards that which affects the mind; I want criminals, when in prison, improved, and I maintain this cannot be accomplished without mental assistance, and a supply of books to induce reflection. Some I hear say, Let him reflect on his crime! What if he does, will he make less or more of the fact, the last day of his imprisonment, than he could at the first?—that he committed the deed, and that the consequence has been punishment. Sincere repentance is wanted, which will only be effected by touching the latent feelings of the heart, through the operations of the mind. But if the mind have no relief but contemplating its own guilt in solitude, for months or years, contrition will be artificial under depression,—not that of mental health and true sincerity. It is our business, having the criminal in our power, to consider the cause which has led to the commission of the offence, the state of mind in which he was at the time, and, before we part with him, to remove the cause, by giving, as far as we are able, another turn of thinking to the mind, which will, in fact, increase the punishment: a hint which I hope will reconcile the advocates for additional severities, to seek their object through the improvement of the faculties. It may be laid down as an axiom in the natural history of all animals, that the corporeal sense of pain is always in proportion to the intellects and nervous susceptibility.

## SECTION VI.

*On Classification.*

IN classing the inmates of a penitentiary I should be more disposed to consider their former habits and walk of life than the crimes they had committed, because all kinds of crime are perpetrated by men of various grades of education; and in arranging them solely with a view of improvement, they should be as nearly of a sort as possible. By the act of 4th Geo. IV., cap. 64, it is directed that prisoners should be divided into two classes, whether tried or untried, and that each sex should be separated. This relates to felonies and misdemeanors, but it in fact includes and confounds all classes; but under the secluded system the evils of contamination will be avoided; it is, therefore, only necessary to class offenders in the consideration of the kind of treatment which may be applicable for their better reformation. Males, I consider, may fall under the following heads:—

1stly. Habitual offenders who have all their lives been engaged in crime.

2ndly. Those who commit crimes of a public nature similar to the foregoing, but only known as first offenders.

3rdly. Those who commit crime supposed to arise from poverty.

4thly. Working men and labourers, who have recently fallen into crime from idleness and drunkenness.

5thly. Domestic servants who rob their masters.

6thly. Embezzlements and thefts by shopmen, clerks, &c.

7thly. Forgers and first-rate swindlers.

8thly. Boys brought up in crime, and those who are not.

9thly. Females of public immorality, and those who are supposed to be virtuous in all but the commission of felony.

I may now be reasonably asked, whether I would have a different mode of discipline for these several classes? I answer, that it is highly desirable to fit the treatment to the case, and to prescribe under the superintendence of qualified persons, according to the *prognosis*. But, for general rules, I would take them as follows:—First, the criminal ingrain. In every case these should be transported at once, and not retained in this country at an unnecessary expense for training to labour, as recommended by “the committee on secondary punishments.” This object will be attained more beneficially to the colonist if it be done under his own eye; let, therefore, the colonial government subject every convict to one or two years labour for the improvement of the colony, before being assigned to a master; this measure would increase the punishment of transportation, and prepare those who were destined to follow rural occupations for their business. The most able and skilled in agricultural employment might be selected, and let out to a profit to the settlers, instead of giving their labour for bare food and clothes. Those convicts, whose former habits, or constitutional weakness rendered them ill-fitted for field labour, might be employed also to a profit by being taught working trades, as bricklayers and carpenters or smiths; and others, unfitted for these purposes, might be used as labourers to attend on those who did acquire a knowledge of any art; every man’s labour and skill should be turned to a profitable account in a country where it is so valuable. Under the present mode of employing men at Sydney, they are an incumbrance, at this town there are on an average four hundred men, chiefly mechanics, acting under the management of “the director of public works,” who receives a salary of 800*l.* per annum, with other lucrative emoluments; the collective salaries of the subordinates amount, at least, to 2,500*l.* per annum. Cost of clothing and food for the con-

victs about £8,000, and the cost of materials is about 3,000*l.* making in the whole 14,300*l.* per annum, expended in the support of men, who, if distributed under proper regulations to work for hire, might net to the colonial government that sum in clear profit every year. We are told that a good mechanic will in a short time, if industrious, acquire money in this colony. Suppose, then, each convict mechanic, (always selecting the most perfect in their trades,) earned only 10*s.* per week over his cost of keep, this would, if only four hundred men were so employed, bring into the hands of the colonial government 10,400*l.* per annum, instead of expending 14,300*l.* in their support, only employing them about useless jobs, and in working for the benefit of those who are placed over them. In Sydney they are known by the appellation of the lumber convicts.

Secondly, Those who commit crimes of a public nature, but only known as first offenders \* Whenever a man commits a public offence, there is always a strong presumption that he has been used to crime before, although not known to any officer of the police, but in the absence of any proof of this, it is but just to treat him as a first offender, and not condemn him to transportation, unless the crime be one of enormity. If sentenced to penitentiary labour, the treatment should vary, according to their former habits, having always in view their qualifications, and the probability there might be of their returning to engagements or employments in the walks of life from whence they came.

Thirdly, Those who commit crime from distress. It would be throwing a wide door open for the commission of crime, were distress recognized by the law, or allowed to weigh with the judge as an excuse for robbery. I am, however, not now discussing what duration of punishment should be in-

\* If the system of inquiry, as before recommended, were adopted, the question, whether the prisoner was an old or first offender must always be known to the court.

flicted on culprits convicted under these circumstances, but I wish to establish the propriety (let the period of imprisonment be what it may) of varying the privileges of amelioration, in at least a small measure, accompanying the causes of crime, both as regards principles of justice and reformation.

Fourthly, working men and labourers, who have not before committed crime. Many of these characters have spent a life of honest industry, and yet from the occurrence of particular events, fall into a month's habit of idleness and drunkenness from which they merge in a mental state of confusion into the commission of an accidental offence. Now, in all cases, when these men are treated as common offenders, they are invariably made so from that time henceforward, and probably their posterity also. These men do not belong to the class of incurables, therefore a short period of labour, discipline, and seclusion from the world, will recover their self-possession, and again fit them for honest employment. This is one of the cases in which criminals may be viewed as a physician does a patient with a disordered brain, considering whether he is a subject for cure in St. Luke's, or New Bedlam.

Fifthly, domestic servants who rob their masters or mistresses. Few, if any, of this class can ever be expected to again return to servitude; it therefore becomes an important duty to teach them some trade, by which, on their liberation, they may have a resource, and by which a livelihood may be obtained. There are many trades suited for this purpose, weaving, bookbinding, &c. &c.

Sixthly, embezzlements and thefts by shopmen, &c. We can suppose there to be but little difference between these and domestic servants under sect. 5th.

Seventhly, forgeries and first-rate swindlers. These are both heavy offences, and should generally be punished by transportation. Prison discipline may also punish them, but I fear they are a description of offenders which will rarely

come out of prison qualified for any practical occupation in life.

Eighthly, boys brought up in crime, and those who are not. "For the former there should be an establishment on an extensive scale in the country, where they should be brought up to useful labour for terms not less than from five to seven years."—vide Crimes, head sneaks. For the latter, (incidental juvenile offenders,) there should be a town penitentiary, where rigid discipline for one year might be usefully applied, their parents being called on to enter into security for their future good conduct.

Ninthly, females. All who commit public felonies should be transported, and a penitentiary be provided for the others, carefully separating the moral from the immoral. Task needle-work will be their best employment.

It is said that criminals are an uncertain and fluctuating body, but it must be remembered that they all come out of some class of the community, a due attention to which can only enable us to legislate with precision as to punishment or reformation. In a general point of view one portion of delinquents may be considered as a foreign enemy lodged in the heart of the country, or a band of conspirators at enmity with the state. If these will not capitulate, they must be sent out of the country,—shipped off to a place from whence they cannot return. The other portion, men who lapse into errors injurious to the state, some under delusions of the mind, others from distress, &c.; cases which will ever occur from the very nature of man, and the construction of society. It is the interest of the state to adopt measures which will recover them, and restore them to a healthy moral condition; by neglecting to do this the former party is made. Some there are who hold that men who break through the moral restraints on society, and injure their fellow-men, are unworthy of any particular consideration; surely these reasoners cannot be Christians!

Our Saviour suffered to redeem sinners, and shall not man sacrifice a little time, and a few prejudices, to follow his example, in calling sinners to repentance? No man can ensure success, but he may do more—he may deserve it. Those who hold that mental training is nothing in repressing crime, in comparison to the fear of punishment, know nothing of human nature, and disgrace themselves by the assertion. It is an opinion founded in idleness of thought, or in a cruel disposition, for which they will have to answer at the great judgment seat of all. The learned, the judicious, the pious Boerhaave relates, “that he never saw a criminal dragged to execution without asking himself, who knows whether this man is not less culpable than me?” And Lord Ashburton says, “England contents herself with the superior wisdom, humility, and justice of her laws in all respects but one, (that is mercy,) and, too fond of the ancient order of things, has alone remained stationary. The nation, indeed, is fully sensible of the evils which attends a multitude of sanguinary laws, and the government itself begins to be alarmed with the magnitude of the mischief.” And Cowper says, in speaking of the laws of England,

“That she is slack in discipline: more prompt  
T’ avenge, than prevent the breach of law:  
That she is rigid in denouncing death  
On petty robbers,” &c.

The notion of systematic punishment is fallacious, unless it be combined with systematic prevention and reformation. Read the effects of severity in its acmé, as given in evidence before the “Select Committee on Secondary Punishments,” by John Stephens, jun., Esq. Speaking of the penal settlements, that is, the Botany Bay, he says, “There were three; there are now two, named Moreton Bay and Norfolk Island, which are set apart by act of parliament for the reception of convicts who have committed some offence in the colony of New South Wales, ‘and being under sentence



of transportation.' Moreton Bay, which is considered the least severe of the two, females as well as males are transported to; but at Norfolk Island, it has been, until within the last twelvemonth, the rule not to allow any females to reside there at all; and I have known a number of instances occur at both penal settlements, of convicts committing murder and piracy with a view to being executed, rather than remain in those penal settlements; and I have also known instances of suicide.

"Have you any knowledge of the system adopted in those settlements?—Convicts are kept at Moreton Bay at very hard labour, felling trees, some with single, and others double irons. At Norfolk Island they are employed in the same manner, and also in the repairing and making roads throughout the island; but the principal punishment arises from women being altogether excluded from that island. The first trial I witnessed in New South Wales was of four or five men brought from thence upon a charge of piracy, and after they had been sentenced to death, they thanked the judge for having ordered them to die; stating, that they lived in such a state of horrid misery, witnessing the most horrid crime known to human nature, committed in numberless cases from morning to night, that they preferred death. I recollect another trial taking place, where a witness (who was brought upon the part of the prosecution, against some men who had committed murder on a poor old man who had lost one leg and one arm, and was incapable of working; they thought his life less valuable than any other, and they walked up and cleaved his skull in two with their pickaxes, merely for the sake of being tried and convicted;) was called on to state what generally occurred at this island; and he said, that unnatural offences were so frequently committed, fifty and sixty cases occurring in a day, that a man could not exist there. It made men so perfectly miserable, that many preferred death to living in that penal settlement."

It will require a great display of rhetorical hyperbole, and sophisticated sophistry, to justify the legislators of any country, however deeply its inhabitants may be plunged in vice, in creating crimes to further vitiate the morals of the people, and in accumulating offences on the heads of those who are already sufficiently loaded with guilt; and this, too, under the pretext of bettering their condition, by inflicting an intolerable punishment on the person for one offence, light in comparison, in the eye of God, to the others which the law engenders, under the erroneous notion of promoting virtue.

“ Experience shows, that in countries remarkable for the lenity of penal laws, the spirit of the inhabitants is as much affected by them, as in other countries by severer punishments. Robberies on the highway were grown common in some countries; in order to remedy this evil, they invented the punishment of breaking upon the wheel, the terror of which put a stop for a while to this mischievous practice. But soon after robberies on the highway became as common as ever. Desertion in our days was grown to a very great height; in consequence of this it was judged proper to punish deserters with death, and yet their number did not diminish. The reason is very natural; a soldier accustomed daily to venture his life, despises, or affects to despise, the danger of losing it. He is daily habituated to the fear of shame: it would have been, therefore, much better to have continued a punishment which branded him with infamy for life. The punishment was pretended to be increased, while it was really diminished. Men must not be led by excess of violence; we ought to make a prudent use of the means which nature has given to conduct them. If we inquire into the causes of all human corruptions, we shall find that they proceed from the impunity of crime, and not from the moderation of punishments. Let us follow nature, who has given shame to man for his scourge; and let the heaviest part of the punishment be the infamy attending it. But if there be some countries

where shame is not a consequence of punishment, this must be owing to the tyranny which has inflicted the same punishments on villains and honest men. And there are others where men are deterred only by cruel punishments; we may be sure that this must, in a great measure, arise from the violence of the government, which has inflicted such punishments for slight transgressions.”—*Montesquieu*, vol. i. cap. 12.

But our governors say, we will have cruel and arbitrary laws *coute qu'il coute*. Let them abide the consequences, both in the history of the national character, and in the world to come; the public at large, who are the most interested in the question, beholds their error, and withholds their sanction, even to the execution of the acerbity of the penal laws already in force. Let them, therefore, make a virtue of necessity, and anticipate the operation of public opinion, by adopting a system of prison discipline, consonant with the true principles of justice, and the spirit of political wisdom, which so characterizes the age in which we live. “Judge not according to appearance, but righteous judgment.”

## SECTION VII.

### *On Juvenile Offenders.*

IT is impossible for those who are strangers to these beings to form any idea what contempt the prisoners generally have of corporal punishment, both men and boys. I have frequently heard the aldermen and sheriffs, when in their visits to the prison and making inquiry into the nature of the several cases, threaten the boys with a severe flogging, and paint the punishment in the most horrible colours their imagination could in-

vent. But this, so far from alarming them, had just the opposite effect, as it relieved their minds from the terrors of transportation. They forthwith resumed their wonted spirits, becoming impertinent and troublesome, saying they had been told their sentence—"only a *teazing* and *turned up*," (discharged;) never ceasing to boast of their supposed good fortune, and of taunting their fellow-prisoners with the want of it. This is the truth regarding the whole, not an occasional instance of some hardened and daring offender; even in their sleep they will talk of their good fortune in escaping with *only a flogging*. There is no mistake in it; the punishment is worse than useless. I am certain, if they could have shortened their durance for a week, they would offer to take two whippings instead of one, any morning, and come back to their breakfasts in good spirits. I really never knew a boy go unwillingly to be flogged, (and I have not seen a few,) as it was always, in Newgate, the prelude to his enlargement. The nights preceding the days of punishment were always spent in the most cheerful manner, for the same reason. Men, immediately after their punishment, would pass their fellow-prisoners, saying, "Don't you wish you were as lucky?" A committing magistrate frequently, when sending a boy to Newgate, intimates to the prosecutor (who may be rather an unwilling one) that the prisoner will probably have only a whipping. This never fails to make the party saucy and troublesome all the time of his imprisonment, thinking he is sure of no further punishment. I have ever observed the boys have become bold, daring, and hardened, in proportion as they have undergone the most corporeal punishment, and probably it is so with men. I knew one boy who endured seven whippings, five private and two public. He was only fourteen years of age. If a boy has once fallen into the hands of a practised thief, nothing but taking him out of society for a long period can afford any hope of his amendment; and this will fail, unless measures be used to rouse the better feelings of his

nature: what is called discipline and severity will never accomplish the object; not even rewards for good conduct, under a system of heavy punishment for the reverse, can avail any thing: they will still remain the same insensible beings, hard and frozen up. The more you coerce, the further is the retrocession from the point aimed at. I wish those who have the management of boys of the description here spoken of, would reflect that, in the majority of cases, there has either been no parent, or those of such habits and temper as would have rendered orphanship a blessing; and that, in all probability, most of them under their care never had a kind or affectionate sentiment imparted to or drawn out of them, by any human being they could look to as a friend; and that they have in a manner been driven to take up arms against society, meeting, from their earliest recollections, with nothing but an enemy in man. Thoughts of this nature ever induced me to adopt a kind mode of treatment; and I have found it to succeed in a wonderful manner, even when others have said that no sense of feeling was left. I am not without a hope but that I have done some good in this way. The effect on one boy was remarkable. He had been abandoned by his parents from his infancy, and had always lived in crime. When I heard his history I became interested for him, and talked to him very much of the course he was pursuing; I reached his feelings, and the effect was wonderful. He, however, went into Newgate three times afterwards, always regretting his inability to follow my advice. Notwithstanding all his crimes, I could not but believe he was sincere in his wishes to become honest. I at length discovered he had an uncle at Birmingham, to whom I wrote: he was a poor man, but was willing to aid my views. I got the officers of the parish to which he belonged to pay for the travelling expenses to his relation, where he now is, quite reformed, and doing well in the service of a farmer. His uncle has sent me a letter of thanks, saying, the boy's only wish was to see me once

more, to acknowledge his gratitude for having saved him. As it may appear extraordinary the boy should be so often in Newgate, I feel it necessary to state, the first time he was flogged, once acquitted, and twice no bill found against him.

I have said, the prisoners generally disregard minor punishments : with the younger ones it sometimes appears to act as a positive inducement to continue in their career. The boy who for his age has undergone the most punishment is the greatest man ; such is their notion of consequence, which an endurance of many whippings gives them, that it is the main topic of conversation with each other. On this subject they will enlarge in the most extravagant manner, making out their offences and adventures as wonderful as their ingenuity can invent ; often concluding with, “ Well, when I have another *teazing*, I shall be as good a man as Harry —.” This feeling is got from the men in whose hands they have been made instruments of crime, and who relate to them tales of heroism, telling them they will be great only as they endure punishment after the Spartan fashion. They at the same time afford these deluded creatures every facility of gratifying their passions, having first promoted an early and premature sense of them. Human nature is bad enough when the passions are attended by reason, and both are developed in due course of growth towards manhood. Ought we then to be surprised at the lamentable results, when the passions are set at liberty without the guide of reason, as in the case of these poor boys ? The seducers of youth find an able auxiliary in the minor theatres, where they are generally sought. The men know, if a boy has a passion for these low exhibitions, that he is a sure prize. This the boys acknowledge ; and full one half have confessed to me, that the low theatres have been the cause of their entering into crime, and in very many instances the offences for which they stood committed were occasioned by their want of money to gratify this passion. When they know they are about to be discharged, the first pleasure they anti-

cipate is going to the theatre the same evening. Although turned out without hat or shoes, and in rags, they make sure of getting the money for this purpose; and I have no doubt many go from the prison-door to stealing for no other object,—such is their infatuation for these places. The truth of this I have ascertained from several who have been detected and re-committed. I remember an instance of one who was flogged on a Friday morning, and brought in again on Saturday (the next day.) He acknowledged to me having stolen a packet of halfpence, containing five shillings, within an hour after he left the prison, for no other purpose but to see some petty exhibition, of which ~~a~~ companion had told him. This boy's father was a hackney coachman, and did all becoming a parent to reclaim his son; he was not yet fourteen years of age, and had been twice before in Newgate; once for manslaughter, on which he was acquitted: he admitted, however, being the cause of the death of the party, an aged woman. The second time, he was tried for robbing a man of seventeen sovereigns; for this he was whipped and discharged. For the last (the packet of halfpence) he was transported for fourteen years.

Although an advocate for the fullest liberty of the press, I regret to add, that if means could be taken to suppress the low publications, of which there are now so many sold, many boys would be saved from destruction who are now lost entirely by the influence these works have on their vitiated tastes, viz. the fictitious lives of robbers, pirates, and loose women. There is scarcely one in print that these boys have not by rote; their infatuation for them is unbounded, and the consequent perversion of their minds very fatal, in every instance when this passion seizes them. Although naturally restless in their habits, they will sit for six or eight hours together, relating and hearing tales of criminal heroes. A boy expert at telling these stories will exact and obtain half the allowance of food from the others, to gratify them in this

passion. How far this taste is brought on by their mode of tuition is not unworthy a consideration: full five-sixths of them are from the national schools, where they are taught to read entirely from the Scriptures, and never see any other works of interest. It is highly probable, if books of general history were put into their hands, and their tastes directed to substantial food for the mind, by which they might acquire a desire for the knowledge of facts instead of fiction, they might be excited to a better kind of reading, and much of the mischief avoided. I would not be understood, that the Scriptures are not of the first importance, but I object to their being almost the only book put into their hands when learning the first elements of reading. Little works of morality, with natural and general history, are decidedly the most proper for their years, and best calculated to excite a taste for knowledge in general; reserving two days in the week for the New Testament with the junior classes, and an extra day for the Old with the more advanced in reading. With the assistance of the Rev. Mr. Cotton and Mrs. Fry, I succeeded in obtaining a stock of these books; and I am satisfied, from my experience with nearly five hundred boys, that no other is so well calculated to engage their attention.

On the subject of boys engaged in crime, many volumes might be written, illustrative of their habits and character, showing by what means they are brought into it, their peculiar situation in life, and cruel treatment under petty offences, many of whom are driven by circumstances into the commission of crime. It has always distressed me to hear of any sentence exceeding seven years being passed on a youth under fourteen years of age, as he can scarcely be considered morally responsible for his own actions at this period of his existence; but as they are made instruments in the hands of others to commit depredations, and thus rendered not only dangerous to society but to themselves, when considered as men, it is of the first import-



ance they should be secured, until their minority be expired, taking care in the interim to give such instruction as the nature of the case will admit of. But to subject *them when men* to the severest of all punishments, viz. slavery for life, for an action *committed when boys*, I cannot but think both cruel and unjust in the extreme. The Roman law of the twelve tables, ordained that an open theft should be whipped with rods, and condemned to slavery, if he had attained the age of puberty; or only whipped if he was not of ripe age. We are, probably, the first and only nation on the face of the earth who, in the adult, punish the crimes done in infancy. The Old Bailey court, however, in proportion to the numbers, as often sentence boys as men to transportation for fourteen years and life. For one prisoner I felt very much, who was sent for the latter term; he was under thirteen years of age, and not a known offender; his crime was stealing his companion's hat, while they were looking at a puppet-show. The unfortunate boy says, "he knocked it off in fun," and that some other person must have found it. He was not taken up until the following day, and the hat was never produced. The policeman who took him into custody resided next door to the prisoner's mother, and was heard to say, "the boy had thrown stones at him, and that he would give him a *lift*." I know not what he said on the trial, but such was his heavy sentence. The mother was a widow, and he was her only son. I shall never forget her distress and agony of feeling when she heard his fate. Nothing can be more absurd than the practice of passing sentence of death on boys under fourteen years of age for petty offences. I have known five in one session in this awful situation; one for stealing a comb almost valueless, two for a child's sixpenny story-book, another for a man's stock, and the fifth for pawning his mother's shawl. In four of these cases the boys put their hands through a broken pane of glass in a shop-window, and stole the articles for which they were sentenced to death, and subsequently transported for life.

This act, in legal technicality, is house-breaking. The law presumes they break the glass, and it is probable in most instances they do so. In two of the cases here named, however, the prosecutrix's daughter told me there was only a piece of brown paper to supply the place of that which once had been glass. In the latter case, the unfortunate mother caused her son to be apprehended, in the hopes of persuading the magistrate to recommend him to the Refuge for the Destitute, or some other charitable institution. She, however, in the course of her examination, said she was from home, and that the house was locked up at the time of the shawl being taken, which was afterwards found at a pawnbroker's. This made it housebreaking; and, in spite of all the mother's efforts, he was condemned to death. He is now in the Penitentiary. The judges who award the punishments at the Old Bailey appear to me as if they were under the influence of sudden impulses of severity, there being at no time any regular system to be recognized in their proceedings. This the prisoners know, and speculate on, particularly the boys.

There is not at this moment a question of any comparative magnitude before the public, equal to that of how we shall treat and deal with juvenile vagrants and offenders. Those who now come under the law are treated in every respect as men, and held as responsible for their actions, although they have been cast upon the waters of life, not only without rudder or pilot, but without a bark to float them, so that they are struggling for life the moment they come into it; being like the small inhabitants of the ocean, the same instant which animates them, also informs them of the danger of being devoured by those of their own species who have had a pre-existence. The majority of those who have not yet fallen under the law, are rapidly imbibing the opinions and principles (as all do) of those about them in childhood, and are being prepared to swell the criminal calendar of the country. Habit, which by a kind appointment of nature, was intended for our good, is, by the neglect of those in power, converted

into a mischief. All, taking man in the aggregate, are born with equal talent, why, therefore, under a prudent and virtuous governorship, should not one cast of thinking be imparted to all whom we have the power of educating? We see the effect of the turn of mind in families when one system of education is adopted for all the children; and so it would be in nations, were an universal and well-digested plan enforced on those who are deprived of the protection and advice of a natural parent.

May 15th, 1833, a boy of twelve years of age was sentenced to seven years transportation for stealing two penny rolls; it was said he was a bad character, but if we are to transport all the bad characters at twelve years of age, that is, all who are the sons of low, vulgar, and uneducated parents in this metropolis, there will soon be a great demand for tonnage amongst our shipping interest. And if we are not to transport all for like offences, being the same characters, why one? The Recorder\* in his wisdom will reply, it is good now and then to make examples, as a terror to others;—always harping upon *terror*. If he had said it was to prevent penny rolls being stolen, I should say his course will succeed though it is not a just one. For as long as this boy's case is remembered by the fraternity, they will naturally put the question to themselves, whether it is not the height of folly to sneak for twopenny plunder in a town like this, where there is such abundance of property, when, if they steal hundreds of pounds, the sentence will be no more heavy, but probably less. Should the boy be retained on board the hulks, and discharged when he is nineteen years of age, will he be improved, and with what notions of law and justice will he come into the world, always remembering that twopence valued in baked flour had caused him seven years' incarceration, many whippings, hard fare, and toilsome labour, besides

\* Whilst this work was in the press this gentleman resigned his office in consequence of Job Cox, who was under sentence of death, being reported for execution contrary to the order of the council.

fixing on him, at the most important period of his existence, the stamp of felon—the state of adolescence being ever referred to, when a man makes his first essay for a start in life? Suppose him to embark again in his old calling, employing boys to aid him, as he himself had been employed; the first principle he inculcates is, “go for heavy stakes,” we need not then rob so often, and shall run less risk; remember my case, seven years for twopence. This is, in fact, the grand argument used to young and timid by the old rogues to induce them to become more bold and daring.

Every motive which can urge men to reflect and act are involved in this question, whether considered generally as regards the nation, or particularly as relates to individuals. It comprehends national character, national and political stability, national prowess and wealth, and national happiness. It includes not only the moral conduct of the nation, but of each individual, as the mere knowledge of the corrupt and untaught state of human nature affords excuses for others to commit indiscretions, who are by birth and education taught better. Youthful delinquency concerns every one as regards his own private property, and that of his posterity. Each parent is interested for his children, in the moral condition of the people, even as viewed in the highways, and the family of every householder, from the duke to the lowest-rate trader is affected by the moral condition of the menials they are constrained to employ, and who nearly all emerge from a state of poverty to occupy these stations. All the cardinal virtues call loudly on man to assist by his advice, pocket, and exertions, to further the views of those who are anxious to deal with this subject on broad and useful principles. Religion, humanity, charity, and justice, demand some legislative measure. Pride, policy, selfishness, follow in the train of arguments,—those very principles which have been actively engaged in opposing it, are now counteracted by the force of circumstances, and enlisted as advocates in a cause

which heaven and earth contemplates with feverish anxiety, —the condition of the rising generation, and that of the world in after ages. It is the triumph of despotism, to suffer children to be ill educated, and then to punish them for offences which have had their rise in bad habits. A man of pure morals will ~~always~~ be the best subject of every state, and pure morals can only be obtained through a virtuous education. Our laws, by unjustly measuring out punishment, subvert the very foundation they would establish. Wherever we open the statute books anomalies present themselves: we read that a man who steals a whole commits no felony, but he who steals only a part does. As in the cases of goods entrusted to carriers, millers, and weavers, I am aware that many subsequent acts on these subjects have been passed, which arose out of the exigency of times and circumstances, still the original ones remain unrepealed, with many others of like nature, all of which go to show the great want of knowledge in those entrusted with legislation antecedent to our time, and prove the necessity of an amended system of the penal code in our own, of which justice to all ranks without distinction must form the basis; then the tendency of the action, and its immorality, with the establishment of *custos morum*—not a mere sitting power to hear charges and commit for trial, but an active one, to examine into, and make report quarterly, on the state of society, and who also should be charged with the duty of making the laws known to the people; which would not be so difficult were the statute laws simplified and accurately laid down, the offence forbidden being explained, with all its shades and punishments. When the nature of our statutes will admit of a work on the subject being intelligibly arranged, it should by enactment be introduced into every school throughout the United Kingdom as a class book for the pupils to read in daily. It is but just that man should as early in life as possible be apprised of the failing of his nature, born as he is to sin, and prone to

mischievous, and be warned of the consequences of not in early life restraining his vicious impulses. Wherever we travel for information on this head, we find that where there is most crime there is most ignorance. In one instance, when the calendar contained four hundred cases of crime, two hundred could not read or write, and fifty more only knew their letters. In Russia, of five thousand eight hundred offences no less than three thousand five hundred were connected with violence; whilst in Pennsylvania, the total number of offences were seven thousand four hundred, and only six hundred and forty were connected with violence.

If a country does nothing for a man, what shall allure him to obedience to its laws? Uneducated, a man is wholly occupied in sensual pleasures. The Quakers, as members of society, and the Scotch, as a nation, have most happily been long convinced of the necessity of education, and have set the world an example which kings should follow. Sir Edward Coke, in his Epilogue to the third Institute, says, "True it is that we have found by experience, that it is not frequent and often punishment that doth prevent like offences, *melior est enim justitia verè præveniens, quam severè puniens*, agreeing with the rule of the physician for the safety of the body, *præstat cautela, quam medela*: and it is a certain rule, that *videbis ed sæpe committi quæ sæpe vindicantur*; those offences are often committed, that are often punished: for the frequency of the punishment makes it so familiar that it is not feared. For example, what a lamentable case it is to see so many Christian men and women strangled on that cursed tree of the gallows, insomuch as if in a large field a man might see together all the Christians that, but in one year, throughout England, come to that untimely and ignominious death, if there were one spark of grace or charity in him, it would make his heart to bleed for pity and compassion. But here I leave the divines to inform the inward man, who being

well informed, *verbo informante*, the outward man will be the easilier reformed, *virga reformante*."

The mistaken views of all in power as to the effect of punishment on juvenile offenders, is one which occasions much increase of crime. In May last I was at Clerkenwell Session-House, when the chairman (Mr. Rotch) passed sentence on a boy for seven years' transportation, addressing him somewhat as follows—"Prisoner, what can we do with you? we have done every thing to reclaim you; we have imprisoned you over and over again, and given you frequent floggings, yet all is of no use: the sentence of the court is, that you be transported for seven years." The chairman then turned round to his brother magistrates, and said, "You see it could not be for want he stole—see how well clothed he is;" forgetting that the clothes were procured by theft, and that so far from every thing having been done to reclaim him, on the contrary, every thing had been done to destroy him. When he first fell into crime you sent him to live, to eat, and drink, and to sleep, among old and desperate offenders, who taught him to spurn any advice but theirs, which he naturally adopted, being most with them; they told him the more punishment he endured the better man he would make. You ordered him to be tied up and lashed in a manner which even brutes are protected from, and this you do from time to time till his brutalization is completed—all the better and latent good feelings totally obliterated—and then call this doing every thing to reclaim him. As the law stands, the chairman perhaps had no alternative but to transport the boy: but that did not compel him to talk nonsense, or to say that which was untrue. If there had been any effort to reclaim him, he would have been kept from vitiating companions; he would have received instruction, and the mind set to work in reading useful and instructive works; he would have been employed in some labour calculated to produce

health and vigour of body, not rendered desperate by despair, after he left prison, of finding any home but in the streets, or any employment but in stealing. I have, under the head of pickpockets, so fully described the condition of these boys, and suggested a plan for reclaiming them, that in this place little can be added. I repeat, that every effort ought to be made to reform children before they are expatriated. Under the head of pickpockets will be seen some further remarks on the societies which have been formed to better the condition of the children of the poor.\*

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## SECTION VIII.

### *On the Effects of Theatrical Exhibitions on Untaught Boys.*

MANY well-intentioned persons have denounced all theatrical representations as prejudicial to the morals of the public; the mischievous effects, however, arise only from private and minor theatres; few can conceive or depict the demoralizing consequences of young persons being allowed to congregate in these places, many of which are unlicensed, and carried on in violation of the law. It has ever been admitted that the stage has a strong moral controlling influence over a large body of the people, and does much in forming the character and manners of those whose avocations prevent them from mixing more with the world, than associating with their own classes, constraining them, in seeking for other models of character and rules of real life, to fly to the stage. It therefore becomes an important and imperative duty of those who take on themselves the destinies of a powerful and populous people, to regulate theatrical representations, under which it may be

\* See further on this subject under the head of Sneaks.



estimated that the tastes (and even the turn of thinking) of one moiety of the town populations are formed. These exhibitions are established ostensibly only as places of amusement; but if you wish readily to form a correct opinion of a people, study their games and amusements, from the rustic at a wake or fair to the exclusives at Almack's, or the *elite* at the Italian Opera House. The stage considered with reference to the large theatres, does more than the pulpit in promoting virtue, and in repressing the vicious habits of society. They aim at the improvement of the world through its amusements. They endeavour to show, that honesty and virtue in man, and chastity in woman, are the only paths to happiness, through the agency of real and ideal characters; the stage exalts mankind in sentiment, instructing them to cherish and cultivate their kindlier feelings: if a robber, a villain, or a frail female be introduced into their representations, a moral lesson is always imparted in the denouement. "To hold as 'twere the mirror up to nature: to show virtue her own form, scorn her own image, and the very age and body of the times its form and pressure;" as they were wont to write on the proscenium, *veluti in speculum*. I wish as much could be said for those theatres which rank immediately below the two principal ones; but I believe no man of real observation will presume to say much in their praise. There is indeed a great outcry made by some on their behalf, but it is only among those whose tastes are vitiated, and with whom grimace and buffoonery is more agreeable than good sense—where are represented *outré* imitations of characters which never had existence in real life, *compositum miraculi causa*, which are garnished with gross ribaldry. This is a dish of amusement but too frequently offered, and applauded by our young cits, who waste the meridian of their youth in picking up from these sources scraps of low wit, sayings, and vile puns, blended with much foolery. One half their nights are spent in again retailing them out to those with whom they

herd, to provoke a laugh, in some back-room of a public-house, over noggins of ale and goes of brandy, enveloped in tobacco smoke. Under a conservative moral government, this would be reformed altogether; it has, however, nothing *per se*, it may be said, to do with crime, but be it remembered, that the more fool you allow a man to make himself, the less chance he has of obtaining or retaining a position in society, whereby he may get his bread, and preserve his honesty; especially as such habits ever in the end lead to the confirmation of a confirmed inebriate. If the performances at the second-rate theatres are injurious to the morals of the *soi-disant* gentleman and actor, who for the most part may be supposed to have had some kind of education, what must representations of the vilest nature effect on the totally ignorant and uneducated! Such are nightly, in every quarter of the town, being exhibited, where may be seen crowds of children of both sexes, under twelve years of age, sitting in pairs, playing off all the vulgar familiarities of grown up, but low and lewd persons. Here the highwayman, the brigand, the pirate, and even the murderer, are shown under circumstances of the most favourable view; their crimes being either wholly excused, or very much palliated, and a taste engendered among youth for every species of adventure connected with desperate undertakings. Ignorant and uneducated children of both sexes, if constitutionally of a temperament above par, immediately on witnessing these representations, take fire, and imaginatively become heroes and heroines; they set up half the night, imitating to the best of their ability the scenes which they have beheld on the stage; and from that moment all moral restraint on their desires are lost. That it should be so is natural: although untaught and low-born, they nevertheless latently possess all the feelings of those more auspiciously placed in life, which being precociously and suddenly excited, in the absence of a matured and controlling judgment, burst forth with a violence overwhelming in its

effect. The mind having never undergone a proper tempering, by progressive reading, and consequent regular development of its powers, is taken by storm, and surprised, when they feel as if they had sustained an internal mental explosion—a mine of desires are sprung, of which they heretofore had no comprehension. All the little materials for thinking which they may have collected in their circumscribed experience, is spread to the winds like the ashes in a volcano. They then become bent on exploits of some kind, and on the unbridled indulgences of those passions, which at this critical period of their lives are awakened: in this feverish state, there is no one near them competent to reason down their intemperate sensations, and they fall an easy victim into the service of any one who is willing to receive them for initiation into crime. If those in authority think this fruitful source of crime overdrawn, or that the instances by which, through this source (low theatres) criminals are made, are few, I can only invite them to accompany me on an examination of the unfortunate boys now in custody, on board the *Euryalus* convict ship, at Chatham, or in the Penitentiary, when I doubt not of making it sufficiently evident and clear to them, that the pernicious consequences to society, arising from theatrical representations, far exceeds any account which can be written of them in a work not entirely devoted to that especial purpose. The afterpiece of “Black-eyed Susan” owes all its attraction, with the vulgar, (and they have been its chief admirers,) to the incident in it of William stabbing his officer, his subsequent trial, and the solemn preparations for his execution before the audience. Whether the organ of destructiveness is predominant in our natures, I will not undertake to determine, but I am acquainted with some extraordinary natural, or rather unnatural, effects, the witnessing of executions have produced, and have noticed the influence on the juvenile part of the audience at a theatre, which in a low exhibition generally forms the majority. I have invariably

found them to show more signs of interest, and even internal delight, when one or more deaths are annexed to the catastrophe of the plot of a performance. The excitement evinced both by males and females, is extraordinary, and there cannot remain a doubt but that the sensations at the time are of a pleasurable kind. These observations I have had confirmed by overhearing a party of boys who were committed for trial : in their conversations they minutely detailed to each other their sensations at different periods of their lives, some of which occurred under very peculiar circumstances. Two of them very circumstantially described the effect of witnessing an execution at the Old Bailey. It appeared that they had not both been present at the same execution, yet their feelings were precisely similar, and the same day on which they were each spectators, led to the same results in each case. By the symbolism of the nerves we are informed that a consent of all the different parts of the body are kept up ; but how the sensations of pleasure can be imparted when the mind is labouring under a feeling of horror at beholding the violent death of a fellow-creature, must be left for the solution of the phycologist—he who has a knowledge of all science, human and divine. The same effects transpire under the punishment of flogging—that is, *priapism* ; the fact is in itself curious, and is here stated for a two-fold purpose ; one, as it in some measure explains how the horror supposed to be produced by witnessing an execution is counteracted in young minds, and rendered nugatory as example, by the super-excitement of the other feelings of nature ; and, secondly, as it points out the impropriety of accustoming young persons to scenes of horror and high excitement, whether acted in real life, or on the stage. I should have much interesting matter to add on this subject, for the consideration of those who are fond of the study of human nature, but it must be perceived that there is an embarrassment attending any writer who may pursue this subject further : my object in alluding to the mystery, is to call the attention of government to the consideration of

juveniles, and to recommend that a more efficient *surveillance* should be instituted over all theatrical exhibitions, and particularly that they should increase the penalties against those who open unlicensed places of amusement; a practice which is now very prevalent in every low neighbourhood. It was only on the 19th of last February, (1833,) that sixty-five persons were apprehended in the vicinity of Clarence market, Regent's Park; this capture took place in consequence of an intimation given by myself to the police. Had not an inhabitant of the parish interfered, it is probable the proprietors would have kept open the premises for months, as many others are doing, whilst I now write, to the utter ruin of all the children in the neighbourhood where the establishment is opened. The admittance to the place to which I allude was sixpence; at many it is as low as one penny, obtaining a new audience every hour. These things must not be allowed to be continued; nothing, however, but a board of public morals, armed with discretionary powers, to use the police as may be found necessary on any emergency, will meet the evil. If a proper example were made of a few of these panderers to the vitiated tastes of the juvenile and untaught members of this overgrown metropolis, the proprietors of these polluting exhibitions would in a short time be driven from their ground. They must, however, be made to feel the full weight of the law, and be taught that it cannot be violated with impunity. But so long as the profits of their calling exceed the penalties, what hope can reasonably be entertained of exterminating them from society in which their practices are so mischievous. I am, however, aware that many difficulties present themselves to the legislature in any attempt they may be disposed to make in circumscribing what are falsely called the recreations and amusements of the poorer classes. There is, however, one regulation which I think might be adopted without meeting with objection or opposition from any man, namely, that the proprietors of all theatres, other places of amusement, and public-houses, tea gardens, &c. &c. (i. e. of every place

of entertainment,) should be prohibited, under pain of fine, &c. from admitting any boy or girl, under the apparent ages of fifteen years, unless in company with, and under the protection of, an adult. Although this measure would not entirely meet the evil, yet, it would throw so many obstacles in the way of young persons catering for themselves in matters of amusement, as to lessen the number of instances of corruption, and constrain youth to seek their pleasures through the concurrence only of their parents and guardians. Many licensed victuallers too pander to the appetites of youth, and betray them into crime; those who have back rooms in private parts of the town allow mere children to meet and dance the night through, providing them with music, lights, &c. for the sake of their custom, and other advantages they contrive to pick out of them, not unfrequently buying their stolen property; but cheating them in every way. I have myself known of thirty of these placed at one time, where females, but mere children to view, from twenty to fifty in number, might every night be seen, tawdriily decked out with baldrick and tiara, dancing with all the airs of a *Bona Roba*, with their fancy men. Sometimes, too, they mask it, by exchanging the whole, or part of each others dresses, or casmising themselves—an amusement always reserved for gala nights. These assemblies are flashly designated cock and hen, chicken hops, or the freaks of the swell kids; uncoruncated Gynecocracy is the prevailing form of government among them, and the female's every vanity is gratified, through the males, at the public expense. Libidinous desires are early excited, and crime becomes (if not before known) contemporaneous with them. If heavy fines, and other penalties, were visited on those, whether licensed victuallers or any other persons, who harboured boys and girls, the progress of this growing evil might be arrested; but a mere law being placed in the statute books will not affect it: a board of morals, having the command of their own officers, especially informed on all these

subjects, can only effectually put down these, and other nuisances to the public, which affect the morals of the people.

## SECTION IX.

### *On the Presentment of Bills of Indictment before the Grand Jury.*

ALTHOUGH many alterations have taken place since some remarks of mine on this subject were before the public, the loss of time and inconvenience sustained by prosecutors and witnesses are as great as heretofore. There are two causes for this, viz. a bad system of arrangement, and the partiality shown in particular cases. As I am about to suggest a totally different mode of arrangement, I must remark that no plan can succeed if it be not strictly carried into effect. In all our judicial functionaries there is a disposition to regard and show respect to particular persons. As there is nothing like the citation of facts, I will state what I saw and felt, on Friday the 17th of May, at Clerkenwell Session House. My presence was required to give evidence in a case to be presented before the grand jury; the gentleman who required my attendance knowing how very inconvenient it was for me to attend, put off the preferring of his bill until Friday, which was considered the last day the jury would sit, and I was assured that I should not be detained more than an hour. After waiting from nine o'clock in the morning to four in the afternoon, and seeing many cases marked off the list which followed my case instead of preceding it, I became impatient, and had determined to remonstrate with the jury the next time they left the room to go up into the court with their bills. During a short absence, however, having gone out for

some refreshment, I missed them, and was told on my return that some parish officers who had bills to prefer against Mr. Scales, of city notoriety, had waylaid the jury on the stairs, and succeeded in forcing their cases on their attention ; at this time I was fourth for call on the list, yet, in consequence of this piece of injustice in favour of parish bodies, I was constrained to wait till half-past six o'clock, and then attend again the following morning, at the loss of another day, having some miles to go home. Whilst I was waiting I went into the court, where I heard the doctrine of partiality propounded and supported by Mr. Phillips, the barrister, before the bench of magistrates, none of whom had virtue enough to check him in advancing principles so fraught with injustice to the public at large. After having prosecuted two men for peculation of property belonging to the St. Catherine's Dock Company, he took occasion to compliment the chairman for his patience and great humanity towards the prisoners ; he thanked him for the preference shown him that day, saying, it was but right companies like that of St. Catharine's should not be inconvenienced by their servants being kept long from business. From this address I inferred that his cases (there were two of them tried in succession) had been called on out of their turn. Public bodies are in some sort monopolies, and are generally better able to pay for substitutes when their servants are called from home than individuals ; besides, it was not very probable that any of those who left the docks for the purpose of giving evidence would return to work again that day, and this Mr. Phillips knew. His object was his own gain, in which he was right, and might be justified on grounds of having a duty to other prisoners to perform at the Old Bailey ; but why shield himself under so preposterous a proposition as to maintain that companies who are rich, should be accommodated, to the prejudice of tradesmen, whose business is most frequently at a positive stand for want of their presence, and who are but too often tempted



during the idle hours forced on them to indulge in drinking, which unfits them for the resumption of business for many days after they return to their homes. The facts, as regards Mr. Phillips are, I expect, these : that it was very inconvenient for him to attend at Clerkenwell session on these prosecutions, the Old Bailey session being on at the same time, where his practice is considerable, and consequently profitable ; yet the company of St. Catherine's docks must not be neglected. Future prospects of employment forbids that it should ; he, therefore, ought to have been personally thankful to the court for the accommodation shown him, without publicly insulting the tradesmen he superseded, and kept from their homes, by stating that they were unworthy the consideration due to dock companies. All who are engaged in prosecutions in Middlesex must be fully sensible of the necessity there is for a reform in the system of preparing bills of indictment against offenders at Clerkenwell. I have many times witnessed the public evil, and the great inconvenience to which individuals are subjected, as the business has hitherto been managed, and considered the remedy. I now submit two plans, out of which, I will presume to say that those having the power, may, if they have the disposition, render the public an essential service, by making arrangements to prevent the profligate waste of time of his majesty's subjects, and no longer allow the meeting of judicial authorities on questions of awful importance, to be considered by low witnesses, and many prosecutors, as a kind of jubilee or holiday. Under the present system every prosecutor is ordered to attend on Monday at Clerkenwell session-house, and is, indeed, bound over to prefer his bill on that day, although, it is well known to all magistrates, that the commitments average four hundred, and that the grand jury do not get through, on an average, more than fifty-five cases in a day. This, on the first blush, presents a great inattention to public convenience, and is irreconcilable with the desire expressed by the magis-

tracy to facilitate prosecutions for the benefit of the community at large. If we suppose only four hundred cases every sessions, that is, every six weeks; (the Old Bailey calendar, however, averages very nearly that number, independently of Clerkenwell sessions, which sit at the same time, and often has an adjourned intermediate sessions to try assaults and rioting cases;) let us, however, take the number at four hundred, as regards the Old Bailey; there then will be four hundred prosecutors; and supposing each case to require three witnesses; (twelve hundred in the whole;) adding these to the witnesses, sixteen hundred persons are ordered and bound over to attend by the magistracy on a day they know that only from fifty to sixty cases can be got through by the grand jury. Now, there are seven police offices in Middlesex, besides the country magistrates, who commit prisoners; suppose a day were fixed on for the presentment of the bills of indictment belonging to each office, and one or more, as may be required for the country commitments, it is clear that no prosecutor or witness could be kept in waiting from five to seven days, as is often the case under the present plan of no system at all; and a separate day should be appointed for the preferring of bills against persons who are not in custody, or under bail, such as perjury, &c. I should further recommend that the clerk at each office be authorized to furnish every prosecutor on the same, or some subsequent day, after the prisoner's committal, with a bill of indictment already filled up and endorsed, with the witnesses' names, having on the face of it the name of the police office from whence it issued, the number in the order as the commitments had occurred, also the day appointed for hearing the cases before the grand jury from that particular office. The country magistrates not acting in union, of course could not number their cases, but they might have the day fixed on for hearing country cases, printed on the face of the bill given to each prosecutor, and thus prevent their being detained in

town for a whole fortnight, as I have known happen, including the time whilst waiting for the trial after the bill had come out from the grand jury. Some objections will naturally offer themselves to this plan, such as, that the number of commitments from each office are unequal, and that the grand jury may have little to do one day, and may be overpowered with business the next; but there are several ways of surmounting this difficulty. The metropolis may be divided into districts, and several offices joined, as regards their commitments, and the manner in which the bills shall be numbered, this being the most important feature in the proposed argument; for when the prosecutor is in possession of his number, and which he is assured will be taken in rotation, he will always be enabled to form some tolerable judgment when his attendance will be required; or if his time be valuable, and also that of his witnesses, he may place an underling at the session-house to apprise him when a sufficient number are struck off to need his presence. Again, suppose the commitments to be taken in the aggregate, and the clerk of the peace, or, if it be necessary, any other officer appointed for the purpose to attend at Newgate every morning for a list of commitments, and the order in which they come into the prison; then let it be this officer's duty to keep a book, having the numbers entered from day to day, from the termination of one session to the termination of the next, and also let it be his business to issue the bills of indictment to all prosecutors, on payment of the usual fee, numbering every one as they were issued, not as they went out of the office, but as the commitment of the prisoner took place during the recess, or in session's time. I will now suppose one hundred to be the maximum of cases disposed of in one day. I will also, by the way, premise that the actual numbers, if I am in error as to these suppositions, have nothing to do with the principle of arrangement as here proposed: those who are practically engaged in the management of these affairs may easily adapt the numbers to the

principle. I am induced to make this observation as there are always persons interested and opposed to the alteration of every old and long-established abuse, who fasten upon any error, although it affect not the question, to prove that the proposer of the measure is ignorant of his subject. If, as before said, one hundred be the maximum of cases got through by the grand jury in one day, then let the officer who is appointed to deliver the bills, cause to be written on each bill, "Prosecutor and witnesses as endorsed on the back, ordered to attend at Clerkenwell Session House on Monday," &c. &c.; then one hundred and one will have written on it the word Tuesday, substituted for Monday, and so on for every hundred, till all the cases are disposed of. Now, as a hundred is, I apprehend, more than the grand jury on an average ever do get through in one day, they would, by the proposed plan, have always a reserve of cases behind to prevent their standing still; but if it should so happen once in fifty sessions that a hundred should be run through early in the day, so much the better for the gentlemen who compose the jury; let them depart to their homes for that day; such rare occurrences and exceptions to general rules ought not to be considered when forming a system of public convenience. Again, I shall be told that one case may, by possibility, occupy the attention of the jury a whole day; granted: so by possibility may an eclipse occur to-morrow unpredicted, but shall the affairs of life be allowed ever afterwards to go on in confusion because we were not wise enough to foreknow the occurrence of such an event. It is our duty to lay down the best system we can, guided by former experience, and not wander on at random because we meet with one or two interruptions in the direct road. In the same order as the bills were presented should they go to trial at the Old Bailey, which would give the prisoner who had been longest in prison the chance, if innocent, of being first acquitted; it would also enable him to ascertain pretty nearly the hour of trial, and afford a fair opportunity for defence

and the attendance of his friends, to speak as to his general character ; it would lessen the number, by some hundreds, of those who now, from day to day, congregate about the Old Bailey court-house and Clerkenwell Session House, making the shameful irregularity of the courts an excuse for living days together in idleness and drunkenness, whilst all honest and industrious men, having families to maintain, who are concerned in a prosecution, would not be called from their homes unnecessarily, and moreover it would lessen the expenses for prosecutions probably one-third. The average number of days all the parties concerned in a prosecution are now detained from their business, in waiting to be called to give their evidence, is five days, reckoning the time of attendance before the grand jury, to find the bill at Clerkenwell Session House, and at the Old Bailey Session House, to give their evidence on the trial. The average number of persons supposed to be engaged in each prosecution is three and a-half. The payment of these witnesses, at two shillings and sixpence per day, amounts to 2*l.* 3*s.* 9*d.* Under the proposed plan of arrangement two days would be sufficient to perform their duties, which would reduce the expenses for witnesses on each trial to seventeen shillings and sixpence. This would be the saving to the county, but the prosecutor would be still more benefited ; his tavern expenses while being kept in waiting for so many days are generally very heavy, having most frequently to treat the witnesses, besides bearing his own expenses.

By the table (page 271) it will be seen that if one-third of the present cost for prosecutions can be saved by dispensing with the unnecessary detention of prosecutors and witnesses, that the county rates will be lessened, and an amount not less than 2,588*l.* be taken off from the present annual cost. It is to the bench of magistrates I now peculiarly appeal, under a full and firm persuasion that all I have stated under this head can, under their authority, be accomplished and brought to work with ease in the interval between any two sessions. The

evil is so great, that were it not possible to amend the present system, and thereby remove the mischief, it imperatively calls on those in power to have two grand juries summoned every recurring sessions, by which the business might be facilitated and dispatched out of hand: this measure the county gentlemen could not have reason to complain of, as although double the number would be called from their homes, yet the business would be performed in half the time, which would be the same thing in the end. But the office for issuing bills to be numbered, and a strict adherence to the plan laid down, with a heavy penalty on all who take bribes to forward the business of one to the prejudice of another, is the only mode of remedying this universally denounced and mischievous system by which one passes his bill in an hour and others are kept for seven and eight days successively; which indeed must always be the case where there is no unity of action between the prosecutor and witnesses. For instance, a policeman is bound over with others to attend at Clerkenwell on Monday to give his evidence; it then becomes his duty to attend on that day and every subsequent one until the grand jury breaks up; but the prosecutor, who is otherwise engaged, hears that it is a very heavy sessions, and that the following Monday will be time enough for his appearance, and that by staying away until the last, he in all probability will spare himself much waste of time; if he does this, (and hundreds do every session,) the policeman, and perhaps several other witnesses, who prefer being paid for idleness rather than work, receive from the county six days' pay for an attendance which has benefited the public nothing; on the contrary, the public are injured not only by the loss of money, but the encouragement of idleness, imposition, and demoralization has been going on among those who in their turn employ the grand jury and offer like premiums to other witnesses to live in idleness and company for nine and ten days—a period quite long enough for the alteration of habits and corruption of many but too

much at all times predisposed, for want of firmness of character and education, to fall into vice ; besides, many ignorant witnesses of loose moral principles think they learn so much of law during their stay about these places, that they know how to commit crime without coming within the trammels of the law. One man who sate beside me last sessions in the court, said, "If I were the prisoner in this case, I could get off." These notions, I will venture to say, make thieves.

#### SECTION X.

##### *On allowing Counsel to Prisoners charged with Felonies.*

IN the House of Commons, March 28th, 1833, Mr. Ewart, in moving for leave to bring in a bill to allow prisoners in criminal cases the benefit of counsel, said that, not seeing the under secretary of state in his place, he would decline entering upon the merits of his bill, and simply move for leave to bring it in, with the intention of going into the discussion on its principles on the second reading. An honourable member (name unknown) was opposed to the bill, but would have no objection to join in a bill which would take away the privilege of counsel from the prosecutor, so that both parties might be placed upon an equal footing, without the slightest preponderance on either side. Mr. O'Connell supported the bill, and stated a case in which three brothers had been tried for murder, convicted and executed, although in his conscience he believed them innocent of the crime, and would have staked his existence that, even with his slender abilities, had he addressed the jury upon the evidence, they would have been acquitted. Sir T. Freemantle said, that he believed a serious injury would be done to prisoners if counsel were granted to

them. The solicitor-general said, though the principle was clear that prisoners ought to have counsel, if counsel were opposed to them, yet there were difficulties in the case. In the case of a foreigner, a dumb, or a blind man, the greatest injustice might take place, were they not to be allowed counsel to speak in their behalf. Still he thought it would be better to try the effect of taking away the privilege of counsel from the prosecutor, unless there was also to be a speech from counsel on the other side. If the principle of allowing speeches on both sides were to be adopted, they must double the courts of judicature throughout the country, for the present courts would be entirely inadequate to try the number of cases. An honourable member was opposed to the bill, for its effects would be to lead to a trial of skill, and the prosecutor, being the richer party, would generally succeed. He agreed in the suggestion of the solicitor-general that it would be better to do away with the privilege of a speech from the counsel for the prosecution. Leave was then given to bring in the bill. The preamble of the bill, since printed, states, "Whereas it is just and reasonable that persons accused of offences against the law should be enabled to make their full answer and defence to all that is alleged against them;" and the enacting clause goes on to say, "Be it therefore enacted, &c. that from and after the passing of this act, on all trials for felony, whensoever any learned counsel in the law, being then of counsel for the prosecution of such felony, shall have called his witnesses on the matters of fact, in furtherance of such prosecution, the person or persons so prosecuted shall be admitted to make his, her, or their answers and defence thereto, and state his, her, or their case, by counsel learned in the law, any law, custom, or practice to the contrary notwithstanding." The Morning Herald says, "The very description of a bill to allow a prisoner to make a 'full defence' to the charges brought against him, is a sufficient reason for the enactment of such a measure." Not to permit a prisoner to make



a *full defence*, or, in other words, to oblige him to make an imperfect defence, while the accusation is pressed against him with all the aid of eloquent statement and ingenuity, is such gross and flagrant injustice, that it can only be accounted for on the principle that there is nothing, however monstrous or absurd in the institution of society, to which long habit cannot reconcile the human mind. But the *impartial and humane* arrangement which denies counsel for the prisoner, the prosecutor making explanatory statements in answer to the colouring given to facts by a speech of prosecutor's counsel, does not exist in cases of *high treason*, the highest crime known to the law, nor in misdemeanors, the lowest. But far the most numerous class are cases of felonies. To make up for this deficiency, the ridiculous fiction is resorted to of the "judge being counsel for the prisoner." The situation of judge is, or ought to be, incompatible with his being counsel for one side or the other. The legislators would not like to answer in case of property against themselves on such terms, to answer a declaration in ejectment without a counsel, so much more value is there set, in this "Christian country," on the property of the rich than the lives of the poor. One honourable member would take away the privilege of counsel for the prosecution, to place both sides on equal terms. Suppose some aged man or woman, robbed and half murdered, who was never before in a court of justice, or, as the solicitor-general says, a dumb or blind man, will any one say that public justice does not require the assistance of a counsel in these cases? But why should murderers and robbers be allowed any more chances of escape, because it is necessary to protect the innocent? The solicitor-general, however, gives us a reason, and a pretty specimen of legal reasoning it is—because, forsooth, it would require more courts to do the subjects common justice. Upon this principle he may advocate the abolition of those now open, as being troublesome and expensive, and allow the magistrate on ex-parte evidence

to hang and transport as he may see fit: the rule of *audi alterem partem* being so very troublesome. Do they not, however, get well paid for their trouble: and who pays them? Another honourable member says, "An advocate may do the prisoners a serious injury." What can he mean by this? Does he mean that an advocate would provoke opposition and elicit more truths, and thereby occasion more convictions? If so, I ask, is this not very desirable? and what is the object of the law but to punish the guilty, and to acquit the innocent? He cannot mean that advocates would injure the innocent prisoners—truth has nothing to fear but from concealment; and if he means that it would be the cause of convicting the guilty prisoner, so much the better for the ends of justice. In no body of men, where pure motives and plain unsophisticated common and rational sense hold any sway, could such notions of the rights of human beings be tolerated. The darkest ages do not furnish instances of more mistaken views of that attribute which distinguishes the Deity from weak and silly mortals, viz. justice to all his creatures, than the ideas propounded in our legislative assembly on this subject. I pray Heaven to amend their judgment and to correct their principles, for the better administration of justice.

One argues for the acquittal of rogues, while another urges, that he who is ignorant, being falsely charged with guilt, shall have no opportunity of showing his innocence. These incongruities and diverse opinions can only be accounted for by supposing men to reason on subjects theoretically, without having the slightest knowledge of facts; or being possessed of any data on which they found their premises. Such reasoners will ever fall into error, *experientia docet*. Law makers generally have but a partial experience of the whole of life, and see things only by halves; they have no comprehension of how some men become meshed in circumstances of apparent guilt, when wholly innocent, from which they have

no more capacity to extricate themselves than they had to keep themselves free from the toils of the cunning man. In May sessions last, at the Old Bailey, the court committed the prosecutor and discharged the prisoner at the same moment, the perjuries of the prosecutor being so flagrant. In this case the wretch, for some reason only known to himself, possessed the diabolical desire of destroying an innocent person through the prejudices and hastiness of the Old Bailey proceedings; but not having ability equal to his wickedness, he foundered, and stood self-convicted. Many similar cases have occurred in the course of my experience, but it never happens, unless counsel be employed to cross-examine the prosecutor and witnesses. If the law allowed him also to comment on evidence, many witnesses would slink out of court in dread of a prosecution for perjury. To use Mr. O'Connell's words, I would stake my existence, and I will add, my hopes of salvation in another world, that even with my poor ability, had I been allowed, in numerous cases coming under my immediate knowledge, to have defended the accused parties, that I should have succeeded in acquitting the prisoners, and of committing the prosecutors. In many of these instances the prisoners have been found guilty, and heavily sentenced. What aggravates the evil of the present system is, that the prisoners are not aware but that they are allowed an advocate, conceiving that when they have paid their money for one to cross-examine witnesses, agreeable to the present law, that they are to have the benefit of a counsel, as understood in the full acceptance of the term. This mistake of theirs has been the cause of many erroneous convictions; whenever you hear a prisoner, in reply to any question asked him by the court, say that he leaves it all to his counsel, you may be sure that the unfortunate man is labouring under the delusion that his counsel will, in the course of the trial, make a speech on his behalf, and enter fully into his defence. Hence it is that all prisoners who employ counsel

are heard to exclaim, after the trial is over, "I have been betrayed by my attorney or counsel!" Those engaged in legislation, and who feel any interest in these matters, must go and witness them, and then judge for themselves—not pin their faith on the evidence of those employed in carrying on the system as it now works. I allude not to any individual in particular; in all cases where many are engaged in one work—and there are various degrees of station and emoluments connected with it—the evidence of any one individual, from the head to the lowest subordinate, is scarcely worth the trouble of recording: each forms a part in a catenated body, the strength of which depends on the immediate connexion with each other. It is a sympathetic chain, in which every link dreads a separation from the one immediately connected with its own.

## CHAPTER VII.

### CRIMES.

“ How few sometimes may know when thousands err !”

“ But for the miracle,

I mean our preservation, few in millions

Can speak like us.”

THE multiplicity of penal enactments in this country must, in the very nature of things, defeat those ends the attainment of which ought to be the object of all law, namely, *the prevention of crime*. Our criminal code exhibits too much the appearance of a heterogeneous mass, concocted too often on the spur of the occasion, (as Lord Bacon expresses it,) and frequently without that degree of accuracy which is the result of able and minute discussion, or a due attention to the revision of the existing laws, or considering how far their provisions bear upon new and accumulated statutes introduced into parliament, often without either consideration or knowledge, and without those precautions which are always necessary when laws are to be made which may affect the property, the liberty, and perhaps even the lives of thousands.

To enter into the number and nature of the laws here, would occupy too much space; some notion of their sanguinary character may, however, be formed, when it is stated

that, thirty years ago, there were upwards of *one hundred and sixty* different offences which subjected the parties who were found guilty of them to death, without benefit of clergy. Although in the present day, notwithstanding the severity of the laws, the different modes of committing crime are almost endless, the principal actors in criminality may be classed under the following heads :—

House-breakers . . . .	Vulgar—Craksmen, pannymen.
Highwaymen and footpads . . . .	Grand-tobymen and spicemen.
Coiners . . . .	Bit-makers.
Utterers of base metal . . . .	Smashers.
Pickpockets . . . .	Buzzmen, clyfakers, conveyancers.
Stealers of goods and money from shops, areas, &c. &c. . . .	Sneaks.
Shoplifters . . . .	Shop-bouncers.
Snatchers of reticules, watches, &c. &c. from the person . . . .	Grabbers.
Horse and cattle stealers . . . .	Prad-chewers.
Women and men who way lay inebriate persons for the purpose of robbery . . . .	Ramps.
Receivers of stolen goods . . . .	Fences.
Forgers . . . .	Fakers.
Embezzlers . . . .	Bilkers.
Swindlers of every description, among which are . . . .	Macers, duffers, and ring-droppers.
Stealing from carts and carriages of all kinds . . . .	Dragsmen.
To which may be added, all kinds of plundering on the river and its banks, on board shipping, barges, &c. . . .	} Light-horsemen, heavy horsemen, game watermen, do. lightermen, scuffle-hunters, copemen, &c.

The whole of these are carried on by confederacies of small parties, and at other times by gangs, when their operations become more extensive. The forger and the highwayman are exceptions; the latter offence is generally committed by one or more, in a fit of need and in a state of desperation, without any system or plan for carrying on the practice; and it may be affirmed that, in almost every case of this nature, the

criminal never committed a like offence before. There have been some few instances of five or six individuals associating for the purpose of committing forgeries, but the cases are rare.

## SECTION I.

### THE HOUSEBREAKERS.

ALTHOUGH not the largest body of offenders, the housebreakers are yet a numerous and a formidable party, and a greater proportion of them have eluded the vigilance of the law than any other species of criminal; but since the establishment of the new police, they have received a check more in proportion than any other public depredators: they have, in consequence, formed more plans of burglary in the country. None of the gangs under the heads of crime, as stated above, confine their operations wholly to the metropolis. London is the head-quarters of the regular and practised delinquent—it is the centre to which they all gravitate, and whence they again diverge into the country to commit crime; many of them taking journeys as regularly as any mercantile house of business in the city of London. There is a gang of pick-pockets who start regularly every spring, to make the circuit of all the race-courses, cattle-fairs, and other places of public resort, returning as the season closes to winter business in town. The housebreaker travels at all seasons, but his journeys are direct, for the accomplishment of some one specific object of robbery. Sometimes it is a *put-up affair*; that is, notice has been given them by some one on the premises in-

tended to be robbed, or by an agent residing near the spot, of an opportunity to commit a robbery. When an intimation of this kind is given, hands are forthwith sent down with a vehicle to accomplish the speedy removal of the property to town. Some of the parties are always in the country on the adventure and look-out for business. As they pass through the different towns they find no difficulty in meeting with loose characters, who are ever ready to receive their instructions, and to listen to the temptations held out to them of gain, if they will but in due time send up an account to the rendezvous of the housebreakers, of the maturity of any scheme for committing a robbery in the neighbourhood where they (the informants) reside. These characters are always to be met with at what are called the flash public-houses, one of which is in every town, usually kept by pugilists.

Those who travel for this purpose are generally dressed respectably, and are so well supplied with money as to support themselves in very good style, without running the least risk, being paid after a certain rate for each successful *put-up*, (intimation :) they are most usually accompanied by a well-attired female, assuming on the road a journey of both pleasure and business. I was very recently informed of one man, who himself carried in his chaise a case of housebreaking instruments, in order to be in readiness in the event of meeting with any chance of committing a robbery before hands could be sent for from town ; and I was favoured with a sight of this case. I had not time to count the number, or to view the various kinds and purposes to which the instruments were applicable ; but I guess there were from sixty to seventy in the whole : most of them appeared designed for lock-picking, with some few for forcible entry. When I saw the case it was in the hands of a carpenter, who had it for a short time to make some alteration in the interior fittings up. He informed me that the whole was made at a cost of 150*l.*, and that if a



door was not bolted, or barred, there was no lock made which could resist these instruments in skilful hands.

When a robbery is determined on, one of the London gang goes down to reconnoitre and arrange the plan of attack, whilst the others follow in a chaise or a chaise-cart. They contrive to reach the scene of action precisely at an appointed time, so that those who actually commit the robbery may never be seen, at any time previously, in or about the neighbourhood of the house robbed. When the object is accomplished, one of the party drives with all possible speed to town, where the goods are either carried direct to a buyer, or deposited in a house kept for the purpose by one of their confederates, who takes no part in the business otherwise than keeping the premises for the reception of property, and making a respectable show of carrying on some kind of trade. As he is never seen in any transaction of actual robbery, they conceive no suspicion can ever be attached to him. Their wariness on this head is carried to an extreme. None of the operative burglars are ever allowed to go to the house, save for the purpose of depositing the goods when first stolen: and some of them are even deceived in this, as the property is sometimes, on its arrival in town, left at one place, and subsequently removed by the master-men to the general depôt. Some of them are so wealthy as to be enabled to keep their goods for years, and thus avoid any risk of immediate sale; waiting until all active inquiry regarding the goods stolen has subsided. One of these depositories was discovered about two years since, by great accident, in which goods were found stolen five years previously. The discovery of this led to another, kept by the same man.

No crime requires so many auxiliaries as housebreaking, to carry it on successfully. As the daring and hap-hazard burglar is now nearly extinct, it is, in every case of the commission of this crime, absolutely necessary the burglars should

be apprised of all the localities of the premises intended to be attacked, and of the exact spot in the house where the property sought is deposited. To obtain this information when a good prize is expected, their patience and perseverance are unremitted. Ofttimes they have their eyes on one object for a whole year, during which they will wait, and have recourse to all kinds of stratagems, to obtain a favourable opportunity ; and they seldom fail. Like the hawk, when the eye is once fixed on the prey, it is ten to one in their favour of success. In the country, if they have a native resident agent, they are soon in possession of all they want ; when the business is done they give him ten pounds, and set him to worm out the particulars of another family, by becoming acquainted with a servant, or in any way he can ; facilities for which are greater in the country than in town.

This body of really clever rogues is unquestionably the most formidable in the country ; and, I think, are more on the increase than any others engaged in crime. Unfortunately, they are seldom or never caught, as almost the whole of the burglars brought to justice are trading on their own bottom, or at least connected with one or two others only. When any of these little parties are apprehended, the officers never fail to amuse the public with an account of the detection of an extensive gang of daring housebreakers, who have been long known to infest the town, &c. &c. There can be no objection to the officers apprehending as many stragglers as they possibly can ; but until measures are taken to cope with the systematic and great body of burglars, no diminution of the loss of property can be expected.

With the first-rate housebreakers the chances of impunity are so great at present, that were it not from the difficulties of introduction to this body, few of the idle and needy would hesitate or refrain from forthwith seeking an initiation into the art, and of enrolling themselves under the banners of the accomplished and professed hands in housebreaking. It is for

the legislature to devise a plan by which this body may be broken up, the public at the same time taking more precautionary measures than heretofore for the protection of their own property. In furtherance of which, the police should cause monthly hand-bills to be circulated, detailing the tricks and stratagems of all rogues, as they come to their knowledge; and cautioning the unwary to guard against exposing their property.

The burglar is never weary of study, in finding out new modes of carrying on the war against the honest man; and it is the business of the police to countermine their plans, by making them known, if not as soon as they are formed, at least as soon as any person becomes a sufferer by them. This, even if unheeded by those whom nothing can make wise, would at least drive the enemy to be perpetually devising new schemes, before he could benefit much by the last-made one.

It will be asked, Do not the newspapers generally insert the occurrences of the day at the police-offices? Yes; but such matter is not read by all persons. Servants—females especially—seldom see the papers; and they are the very persons who should be most informed on this subject, and constantly admonished and instructed how to guard their master's property. I would have published, in the first instance, a catalogue of all the *old* and *present* known tricks; after which, from month to month, those which were found to be most in use.

Since this hint has been published, some bills have been circulated by the police department, but they are too loosely and generally drawn up to answer any efficient purpose. Particular cases should be stated at length, which would make them interesting to read, and, consequently, leave an impression of remembrance on the mind of those who most require repeated cautions. Had an account of the practice of swindlers writing into the country to manufacturers, for goods

to be sent up to certain directions in town, on receiving payment beforehand, and which payments were made with forged bank-notes, as in the case of Richard Coster and his gang, been properly made known through the country, the first attempt, whether successful or otherwise, would have been also the last. It may be said, that hand-bills published in London might not meet the eye of parties resident in the country; but suppose a good system were established, and an office for carrying the same into effect instituted, the post-office gratuitously lending its aid, might not a copy of every caution be regularly forwarded to all magistrates throughout the whole kingdom, with instructions to have it again reprinted in each district; and, if (in particular cases) thought necessary, have the same inserted once or twice in the country newspapers? Reciprocal town and country communications would thus be established; and it should be as much the duty of provincial magistrates and tradesmen to forward the cases occurring under their experience to the metropolitan office, as it should be theirs to instruct and inform the rural population of their dangers, the sequent to which should always be publicity; and I am not quite certain but if a national paper of this nature were printed, whether it could not be made a great source of profit, not only as regards the protection of property, but in a pecuniary way. Nothing, however, answers, if but half attempted; such, notwithstanding, is always the course pursued by our government in legal questions; they appear to have as great an abhorrence for perfect measures, as nature is said to have for a vacuum.

It would be foreign to my purpose to introduce such a list here; if they are unknown to the police, they may be obtained in various ways. I can name several boys now in custody, who have been actors in some of the most complicated schemes of burglary, and from whom much on this head might be elicited. One in particular, who began his career by robbing a gentleman in Mark Lane of plate to a considerable amount;

and as it shows one method of committing a robbery, I will relate how it was accomplished. The boy was under sentence of death when I got the history of his life from him, he having been nine years in the successful commission of crime; and although nearly eighteen years of age, his appearance gave him credit for only being fourteen. Whilst in custody, his constant theme of regret was that he had left the parties in whose services he had been so long and securely employed, to join some of his own age, embarking in business for themselves; by which he was "nicked" (taken up.) He was an orphan, and had been brought up in the poor-house, whence he was apprenticed to a sweep in the city. He was a remarkably sharp boy, which no doubt was noticed by those who are always on the look-out for agents to aid them in their schemes. He was met one morning early, with the soot-bag on his back, by a man who pretended to be his uncle, and who gave him a half-crown piece, making another appointment for a meeting; the result of which was, before he had served sixteen months of his time he had given information by which fifteen robberies had been committed. He, of course, had been paid for his services, which soon made him disgusted with the sooty business; and he made an arrangement with the man who drew him into crime, to leave his master's service, and to commit with him a robbery on their own private account before he left. The house fixed on was the one above alluded to in Mark Lane. The premises had before been surveyed, and deemed impregnable; that is to say, were considered too well guarded to be robbed without detection. They, however, got possession of the plate in the following manner:—

The boy was a favourite with the cook of the house, and she would have no other to sweep her kitchen-chimney; a matter of business which was performed the last Saturday in every month. It was concerted between the man and the boy, that the former should dress himself in the character of a sweep, and accompany the latter as his overlooker, or assis-

tant. The real sweep-overlooker, of course, must be kept out of the way ; and here laid all their difficulty. It cost the boy (to use his own expression) six months' longer punishment as a sweep, and the man six appearances, at an early hour of the morning, in the same character, before the object could be carried, namely, to get rid of the real sweep. At length, one Saturday, by pretending to forget the job until all the men were gone out about other work, the boy, affecting suddenly to recollect it, persuaded the master to let him go alone, saying he himself could perform the duty. It was five o'clock in the morning when he and the disguised robber reached the house ; the cook opened the door, having nothing on save a blanket thrown over her shoulders. The arch young rogue said, " It's only me and Harry ; it's a very cold morning ; if you like to go to bed again, cookey, we will do it well, and leave all clean, and shut the door fast after us." She went to bed, and they went to the plate depository, which had been well noted oftentimes before. They put the whole of its contents into the soot-bag, and fearlessly walked through the streets with it on their backs. The boy, a few hours afterwards, was so metamorphosed, being dressed in the smartest manner, with cane in hand and fifty pounds in his pocket, that he walked the streets in full confidence that not even his master or his fellow-apprentices would know him.

Hundreds of put-up robberies are through sweeps, who, as they go occasionally into every room in the house, can give the necessary information. I can name several now on board the *Euryalus*, who have even committed robberies by descending the chimney ; and there is one among them who received the contents of a pistol in his leg, whilst making his escape through that channel.

Others of the gang, belonging to housebreakers, employ themselves in courting the servant-girls ; by which means they frequently obtain admittance to the house during the absence of the principals, and thus become acquainted with all the

localities of the premises, and the habits of the family ; after which, they lay their plans with almost a certainty of success.

I am in hopes this latter practice will not be so available to them in future, as I daily observe our police all over the town engaged in these amours, which must render the fair damsels of the broom somewhat less eager for chance paramours. It is, therefore, much to the credit of Messrs. Rowan and Mayne, that they have selected so many fine tempting young men for the service ; which, no doubt they are aware, takes off the edge of the maiden's *penchant* for other sparks. Cautioned, however, they should be, and their masters and mistresses, in every possible manner. Printing and paper are now very cheap, and the plan would not form an important additional item in the annual expenditure of the police establishment, were bills left at every house once a month ; the delivery, of course, would be performed by the policemen, as they went their usual rounds.

The country robberies would be much lessened, if persons stationed on the roads were authorised to inspect vehicles passing through their districts, particularly within twenty miles of town. I conceive nothing could be easier than to connect something like a police force with our turnpike system, at a very trifling cost compared to the immense advantages which would accrue to the public ; by which means a surveillance might be had over those, more particularly, who travel by night, and were in any way suspiciously circumstanced. The number of regular housebreakers are supposed to be about three thousand in and about the metropolis.

## SECTION II.

## HIGHWAYMEN.

HIGHWAY robbery, according to the usual acceptation of the term, is now an unknown crime ; Haynes, of Hounslow Heath memory, being the last of those termed highwaymen. It is now only committed by occasional desperate men, and generally in the suburbs of the metropolis, or in a crowd, where a gang of fellows sometimes surround the person, robbing the party in the face of all the standers-by. Nothing but the vigilance of the police can cope with these characters, as the recklessness and desperate state of the thief at the time, arising from want of money, places the offence out of the pale of all precautionary measures ; and it may be relied on, that the generality of thieves have even an abhorrence of any violence committed on the person. They have a very unfavourable opinion of any of the fraternity who cannot carry on their business without it.

I had an opportunity of seeing a remarkable instance of this last year. An Irish itinerary tinker knocked a captain of a vessel down, in the neighbourhood of the London Docks, in a most brutal manner, in the dark, and robbed him of his money. When the fellow was committed to Newgate, he applied to me to make out his brief : from the desperate nature of the offence I at first declined doing it, knowing he must suffer ; but the man urged me so much, that at length I consented ; he saying, “ If I am found guilty I know I am



as dead as Harry the Eighth, and shall not blame you." There were in the same yard where he was, before his trial, nearly a hundred prisoners, one half of whom were transports, but not one of them would associate with him, in consequence of the nature of his offence; and when I went to take his instructions for making out the brief, they all called out for me not to do it: and I got some insults for having undertaken it. They afterwards led the man such a life, that he appeared to be relieved when he was condemned and sent to the cell. From this it may be seen, as Lord Byron writes, "none are all evil."

On the morning of this man's execution, not a word of commiseration for him, or reproach on the practice of hanging, was uttered, by one hundred and twenty men who followed crime as a trade. On the contrary, they all, *nemine contradicente*, said he deserved his fate. Yet Mr. Wakefield says, (p. 185, second edition,) "It can hardly be doubted, that every year persons confined in Newgate, who have never committed crime accompanied by any violence, are converted into savage burglars and merciless footpads, by the feelings of anger and desperation which the killing of their late companions engenders."

The explanation of this is, that the character and feelings of the public thief, as of all other classes of society, have undergone a visible and marked change within the last thirty years. Whether it has been for the better, is another question. Formerly, the heroes of their party were fellows conspicuous and famed for open and daring acts of plunder, in whom the whole body had a pride, and whom they all felt ambitious to imitate; failing only to do so for lack of the same quantum of courage. The more desperate and numerous the instances of robbery, the more were the parties lauded and admired. It was then the fashion among these men to boast of their conduct under punishment. In those times

there must be no snivelling, no 'peaching, no contrition; and the malefactor must die bravely to entitle himself to fame. The Turpins and the Jerry Abershaws of the day were the objects of their admiration;—such men as on the road to execution would stop and drink gin, offering libations to the success of all highwaymen, and when on the gallows kick their shoes off, swearing with an oath, they “always said they would never die with them on;”—or like Despard, who, when brought out for execution, remarked to the executioner that it was a fine morning, and wondered what sort of weather it was in the other country; adding, “But never mind, I shall soon know all about it.” All this kind of heroism has subsided; their leaders now are men rendered famous for scheming, subtlety, and astuteness. Formerly, the passport to enrolment under their banners was a name for boldness and monstrous acts of outrage; now a certificate must be brought of the man never having committed an indiscreet act in his calling; and that the party “is up to all the moves upon the board, and knows something.” This “knows something” is a sentence ever in the mouth of the thieves, and has a very extensive meaning. When an associate of a set of rogues recommends an acquaintance for admission into their party, the first question asked by all the members is, “What does he know?” If the answer be in the superlative degree, “Every thing, and is a good operator,” he is admitted; but if the reply be in the comparative, and “He only knows something,” then they are very cautious, even should the party be admitted, of entrusting him with all their movements: nor will they allow him what they call *regulars*; that is, a fair proportion of the plunder. This is done by an understanding among the rest.

It cannot be uninteresting to contemplate the progress of delinquency, and the habits of delinquents, in reference to the general alterations society has undergone within any given period. It is the peculiar characteristic of the age in which

we live, that every man takes upon himself the office of censor, condemning and dilating on the wickedness of his neighbour, for those faults he himself possesses to exacerbation, and which he endeavours to cover by cant and hypocrisy. The universal rule is to wear a mask—to set the face at variance with the heart: every one now trims his boat, and makes his tacks. All the purposes of parental education are now only to teach the mysteries of deception—the system of society—the world as it is *modified*; the first elements of which are, man is a cheat! Believe no one; all genuine principles appear to be prostrate, and *fronti nulla fides*. In trade, chicanery and trickery is the order of the day; faith between man and man hath taken wings and flown away. The thieves only appear in their movements to have got a little the start of their contemporaries, by vigilantly watching the revolutions of the times, as regards society, and taking their measures accordingly. When men carried arms, and appeared face to face on the road, they went there, pistol in hand, to meet them. Now the system is changed, they oppose cunning to cunning; and their success, with their increased and increasing numbers, proves which have been gainers by the modern mode of warfare.

But I am afraid there is another disadvantage the non-practitioner has to sustain in the conflict. The laxity of principle in which the present generation of tradesmen have been brought up, has led many to venture so near the enemy's territories, that, whilst they have been looking over the hedge, considering the exact boundary between their own and their opponent's provinces, they have fallen into the ditch which runs in the intermediate space; and when taken out have been, from their great similitude, *recorded* as belonging to that class they were always so vehement in professing to despise. And this, to drop the metaphor, is the truth. The number of professed hands is not so very great as our returns would lead us to infer. There is a much larger proportion of casual delin-

quency in society than heretofore ; which, of course, goes to make up the apparent numbers of regular thieves, as viewed in the returns. Correct statistic tables on every question may be regarded the most valuable papers among the records of any country.

I recommend, that in future a more minute register be kept (and I have before shown how it might be done) of the true character and habits of all persons coming into custody. If this were performed correctly, the public would be possessed every year of the actual number of real thieves convicted, as also the number again let out on the world. In the way the returns are now made, we only know the gross amount of delinquency ; from which we cannot ascertain whether the accumulation of crimes is more among the body of regular thieves, or whether the instances wherein poverty has been the cause, preponderate. And again, whether the number of servants, shopmen, and clerks robbing their masters, has increased of late years ; and it would not be labour lost, were the education which had been bestowed on each ascertained, and an annual average return of the rate of education convicts receive given to the public. The modern thief, like the Indian, not only hunts his game with a scent, sagacity, and certainty, which excites astonishment in the minds of those unused to their habits, but he carries his caution into prison with him. Any close observer will now at once know an old thief, by his passive and sly quiet manners whilst awaiting his trial. In prison, what are called the best-behaved men are all the old rogues ; they know the thing must take its course, unless counteracted by other means than kicking against the pricks : and they are conscious of the folly of adding to the charges against them a bad character whilst in prison. It is very common for them on trial, when they know the case is hopeless, to decline asking the witnesses any questions, except the officers who apprehended them, to

whom they usually will put this question—"Did I make any resistance, or give you any trouble, when you took me?" They have a notion this conduct makes a favourable impression on the court. After sentence is passed their true character shows itself; their former quiet demeanour is changed into irritability and violence, which is restrained only by the rules of the place in which they are confined.

### SECTION III.

#### COINERS.

SUCH coiners as are generally brought to the bar of the Old Bailey, are persons from whom the public suffer less than any other criminals. They are generally men who have manufactured some clumsy imitation of the currency, in a garret, not much better than leaden dumps, which never can be circulated but at fairs, or at low gambling tables, where all is noise, hurry, and confusion. The government has a most hyperbolic notion of this crime; they are ever seeking for offenders among the ignorant and the poor, who are without means of any kind to carry on the manufacture of good counterfeits. They even entertain the preposterous idea, that the making of base coins is going on amongst the convicts on board the hulks; and the select committee put a series of questions to the discharged convicts, who were examined before them on a recent occasion, to ascertain the fact. Nothing can be more absurd than this notion. Conceive men confined

on board a ship, in compartments containing not fewer than thirty each, with a sentinel over them night and day, so situated as to command a view of all that passes in each ward—men, too, searched every time they leave or return to the ship, besides being most closely watched during all their hours of work on shore—and who are never allowed to approach a fire. What opinion can we form of the judgment of those persons who could employ their time in seeking for coiners in such quarters? More chimerical and absurd notions never entered into the heads of any men. The malefactors who have been executed for this crime have generally been some poor wretched tinkers, who really, as far as any injury to the public was concerned, might have been allowed with safety to have peaceably carried on their trade. The coiners to be dreaded are of another description,—men who are possessed of money, talents, and premises, to accomplish the manufacture of good imitations, and that on a large scale. Such men, however, appear only at intervals of time, and consequently their issues are occasional, and may be said to be rare. As soon as such issues are known to be in circulation, the government may be assured that a large coinage of them has been made; and if they adopted prompt and proper means, the circulation might soon be curtailed, and the offenders brought to justice. You cannot successfully contend with any of the offenders, without using their own agents against them:

“ Ah men! what are ye, and our best designs,  
That we must work by crime to punish crimes ?”

This has in several instances been attempted by those whose business it is to direct these matters; but the efforts to do so which have come under my notice have been so ill and clumsily conducted, as hitherto to have no good effect in repressing crime in the slightest degree. It would be tedious were I to state all the instances; one, therefore,

shall suffice, to prove how this part of the business in the criminal system is managed. A notorious character of the name of Lea, a Jew, who had several indictments against him, was placed at the bar of the Old Bailey some time in the year 1829. After having been found guilty on one or more charges, he wrote a note to the judge who was trying him, on which all further proceedings were suspended. At the termination of the sessions he was not even brought up for judgment on those indictments on which he had been found guilty. This man's character had a short time previously been in a peculiar manner before the public, in consequence of evidence he volunteered to give relating to a pretended confession made by a young man named Birmingham, the servant of an officer at Kensington barracks, whilst they were both in Clerkenwell prison. The young man was charged with the murder of a girl, who was found dead in the road near Hammersmith, with a stab in her side, on which occasion it was not only shown that he (Lea) had given false evidence, but, under cross-examination, his own crimes became publicly known. I will say nothing of these, as perhaps they qualified him better for the purpose for which he was selected, viz. to impeach the receivers of stolen goods; or, rather, to give information respecting them. Ultimately he obtained his liberty, and there can be no doubt but under some such promise it was granted him. The country, however, never derived any benefit from his services, not a solitary offender having been brought to justice through his means. How should there be? Mark the way it was done! They take a man who had been rendered conspicuous to the public, and all the fraternity of thieves, by his vile attempt to convict an innocent young man of murder; they place him at the bar of the Old Bailey, and then stop all proceedings against him, in the face of all the offenders in London. A hundred letters were sent out of Newgate that day—I need not say for what purpose. And, as if all this were not enough, they keep him six months in

Newgate, sending continually for him into the office to be questioned by the sheriffs, all of which was seen by the other prisoners; besides allowing him to keep up a correspondence with the sheriffs, of which he was every hour boasting to his associates, until the governor was constrained to remove him into the infirmary, for fear the other prisoners should commit personal violence on him. Had they here used all their skill for the sole purpose of rendering of non-effect any information this man might give, they could not have accomplished that object more effectually. The moment his other trials were foregone, and his judgments suspended, all the receivers of stolen goods and the thieves were awake, as they express it; and when they are once wide awake, it is not an easy matter to catch them napping. I know not whether there be any secret agency employed in the police; but if there be, the business is evidently very badly performed; and if not any, there *should* be an establishment of the kind. A half dozen clever and experienced men, who never filled any public office in the police or a prison, would do more regarding information about crime and offenders than all the evidence ever taken by all the committees of all the parliaments which ever sat to take it. A small establishment, I am confident, might be made very effective against offenders. Send spies into the enemy's camp. Nothing would be easier effected, if the *employés* were judiciously selected.

But, to return to the coiner. Whenever he becomes formidable, he is only to be attacked through the smasher, (passer of bad money.) When one of these is taken, instead of carrying him before a magistrate, and exposing, the next day, the whole affair to the public, by which those who deal in the article have time to change their quarters, should the passer be disposed to give the necessary information, and thereby render it useful, suppose there were a kind of supreme magistrate, who might sit at the home secretary's office, authorised, on certain suggestions being made to him, to order the prisoner



to be brought to him in private. By the adoption of this plan, when an officer had a willing impeacher in custody, every secrecy should be observed for the better apprehension of the guilty parties. The thieves in general never split, (as they term impeaching their companions in crime.) It is very different with the passers of base money; they are, in nine cases out of ten, ready, on any little advantage being held out to them, to give all the assistance they can to the police for the detection of the coiner, because there is no compact between them and the real manufacturer; they do not even know each other, and consequently have no fellow-feeling, the coins come in such a very circuitous manner into their hands. But even with the regular thief much more might be done, by giving him assurance of secrecy. If the authorities have two offenders, whom for want of evidence they think they cannot convict, great things are said to be done if they induce one to impeach the other, by which "one is taken and the other left." Now, an impeacher on ~~my~~ system would, if well rewarded and properly used, detect half the offenders in London in one year. I say rewarded. He steals for money, and runs every risk;—would he not then prefer money without risk—and none he needs ~~run~~ under management; besides, there is a chance, when a good hand is obtained, of his being useful for years. "Set a thief to catch a thief," is an old adage. I am satisfied, if they will but arrange and construct the system so as to give the thief an opportunity of parting with his repugnance, and show him how it may be made profitable to him, he will soon come into their views.

Between the real coiner of a good counterfeit and the utterer there are often seven or eight persons, who in every transfer use the most artful and cautious methods of carrying on their dealings. They never let each other know where it is de-

\* The Board of Commissioners, which I have in another place recommended, would do this duty much better.

posited, or any thing regarding its transit from one hand to another. When a bargain has been concluded, the buyer is obliged to place confidence in the vender, who receives the stipulated sum, and immediately walks away, first instructing the purchaser where he may go and find the number of base coins which has at a former meeting been agreed to be purchased. Sometimes this transaction takes place in an open field, where the seller can see if he is watched; who, after payment, points out a spot where the articles are buried under the earth. He who vends them never keeps any pieces about his person, or at his residence; and this caution is kept up through the whole line of dealing, but increases as it nears the actual retailer. The utterers, like the coiners, are of two classes. One is scarcely a remove in appearance from a mendicant, and the other, men who go about in what is called a bounceable manner, always in a hurry, making a great show of money. They start into the country, jumping off the coach whenever it stops in a town to buy a pair of gloves, or some other trifling article, to get one of their fictitious coins exchanged for real money. It is a very common practice of theirs to place one base coin, suppose a sovereign, with eight or ten good ones, bounce into a shop, make a small purchase, take out the whole and throw them on the counter, pretending to look for change, then cast out the bad one in a careless manner, which puts the shopkeeper off his guard.

It is generally considered by the adepts in crime a hazardous and less profitable speculation than many others. One man, who had been under sentence of death for this offence, showed me a statement, by which it appeared he had in three years, besides his travelling expenses, cleared 600*l.*; but he admitted this was a rare instance of success, and in some measure was accounted for by his being considered a first-rate hand in the business. The public, however, are not in any danger of losing much now by this species of deception, as it

requires but very little caution on their parts to protect themselves: the superior excellence of our currency is such, that few can be deceived, if they use but common caution. Those who pass the bad imitations never attempt to do so with the regular adult and experienced tradesmen; their practice is to watch the shops, and ascertain that the master or mistress who attends to them are absent, and that the counter is for a short time left to the care of a boy or girl; they then go in and purchase some trifling article, and ask for change of a crown piece, &c. &c. Recently, no less a number than thirteen counterfeit crown-pieces were passed within one hour, at Camden Town, and in every instance the master was absent, so well had they watched their opportunity; otherwise it would be impossible for them to succeed, so wretchedly are their imitations performed. When they are disappointed by the appearance of the principal, they either pay for what they have had, or leave the shop without making any purchase.

#### SECTION IV.

##### PICKPOCKETS.

NEXT to the housebreaker, the pickpockets are the most troublesome body to deal with; not that they occasion so much loss of property to the public, taken as a body, as the burglar, but they are more numerous, and are more readily initiated into the art and mystery of their calling; in consequence of which they are ever augmenting their numbers. As they are,

with very few exceptions, all of the thorough London breed, they have from their earliest recollections a large circle of acquaintances, of their own standing in life, most of them coming from the low and populous districts of the metropolis. When any of the boys in a neighbourhood are seen to turn gentlemen, it is natural for all the others to inquire how he has acquired such smart clothes, and can afford to spend so much money. They are soon informed, and immediately resolve, if possible, to participate in the same pleasures. Unhappily, the opportunities for their introduction are too many for them to remain long inactive, when the resolution is once formed. The older hands are always on the alert, looking out for the sharpest boys from these neighbourhoods, whom they teach, and set on to take the risk of crime, themselves reaping the profits. All who discuss or write on this subject dwell on there being nurseries of petty crime, and schools of capital crime; of women being in league with thieves to seduce boys, by exciting a precocious gratification of sexual passions; and that the task of suggesting to the intoxicated youth, that robbery is the only means of continuing to enjoy a life of riotous debauchery, is left to women. And the select committee on secondary punishments actually asked A. B., a discharged convict, the following question: "Have you any reason to suppose there are schools in London for teaching robbery?" And again: "Did you ever hear them say what was the age—whether it was like a sort of regular school, or whether individuals associated together, and taught each other?" The answer is, it was a sort of school where they educate these *people* to do it. All this is perfectly ludicrous, and quite unworthy the good sense we have a right to look for in a committee of our House of Commons: if they had never been to school themselves, they might have been excused for inquiring for such a place of education. This is on a par with a story told in a recent work on this subject, of the old

apple-women in the street coaxing *respectable* boys to get into their debt for lollipops, and then persuading them to rob somebody of money to pay for them. Observe the *rationale*! because the boys have a higher sense of the sin of being in *debt* than they have of *stealing*; and these are, mark! “the sons of decent tradespeople, *carefully educated*, apprenticed to some trade, and with every prospect of leading an honest and industrious life.” It is astonishing how far some persons will travel for bad reasons, when good ones are close at hand. The old women in the street are *criminis particeps*, I am aware, but it is in this way,—they are great receivers of stolen articles from the petty thieves, called sneaks and sawney-hunters, who are ever prowling about the streets, watching an opportunity to snatch pieces of bacon, cheese, poultry, or any other commodity from which the shopkeeper withdraws his watchful eye for a moment; and they always have a ready market for every edible article with the fruit-women in the street. These young rogues are about as numerous as all the adult offenders in London put together. This may astound many, but it is a fact. A great portion of them are orphans, or chance children of the poor, with not a small sprinkling of the children belonging to natives of the sister isle. The rest are legitimate children of the lowest classes, with a few boys of more respectable parents, whose natural dispositions and uncontrollable natures hurry them, in spite of every effort of their friends, into crime. This is the *nursery*, this is the *school*, in which all are scholars, and all are masters and teachers. Many of these young urchins carry trifling articles about for sale, as a “*stall* ;” and it is from the practice of the old women keeping a stand for the sale of fruit, as a blind or cover for their real calling, (buying of stolen articles,) that this term, “*stall*,” is derived, and which is in so general use among those called “the swell mob.” I have had a peculiar opportunity of knowing something of this numerous body of

infant depredators, the extent of which is as great as I have stated. And what is more extraordinary, there is scarcely one but knows nearly all the others, either by name and deeds, or personally. This arises from their so frequently changing the scene of their predatory exploits, and their always sleeping, in each change of district, at the lodging-houses ever open for their accommodation. At these places they meet in parties of from fifty to a hundred, talking the night through of nothing but plunder, and the tricks of their short life. It is from this body the men select the youths they want, who are forthwith entered as *demi-co* into the elder society, and in regular course become fellow crafts-men, if not before cut off by transportation. To prove this there needs no committees to examine A. B. or C. D.: the only question is, how we are to legislate for this body of young and determined depredators, as it is evident the present law is not efficient enough to put them down as a body; and out of which, as long as they exist as a body, London will be supplied with adult offenders in proportion as this juvenile class increases; and what makes it a very serious question is, that they are daily becoming stronger. The wisdom of our forefathers provided for a supply of erudite men in the country, by the founding of colleges, and exhibitions from the public schools connected with these establishments: and the thieves have their system for keeping up a supply of pickpockets; and, as far as they are concerned, it has answered. There are no schools, nor are there any teachers, in the sense these terms have been used. Their course and education is this, and many commence as early as five years of age: all the boys in low neighbourhoods associate together, and usually spend the whole of their time in the streets; if they go to a national school, it makes very little difference—their society is of the same description. Out, however, of five hundred boys examined by me, under the most favourable circumstances it is possible for any one to be placed in for ascertaining the truth, very few had been to

any school for a longer period than one or two months. Those who could read the Testament, generally had learned so to do in the prisons they had been placed in from time to time. A young one begins in the company of others a little older than himself, and who has had some previous practice, to go the rounds of the market-places, stealing apples, turnips, carrots, and fruit of all kinds. By this practice they acquire patience in watching, and dexterity in snatching their plunder; and as they are taken out for the purpose of fags to the other boys, they soon become proficient:

“Wax to receive, and marble to retain.”

Success gives them confidence;—they then attack shops, sneaking about the doors the whole day, and stealing all moveables coming in their way; and the instances of their success within my own knowledge would astonish the most credulous. They soon find out what shops are “good,” (their own term;) that is, where the shopkeepers are most careless, and the property much exposed. Of these places the whole fraternity have a knowledge: they acquaint themselves with the best hours of attack, and of every particular relating to the habits of the master and his shopmen; and when at length a place is no longer “good,” (meaning when the owner of property, by repeated losses, becomes cautious,) the same is circulated, with more certainty than the public newspapers could do it, through the town in a few hours. Their meeting every night at the lodging-houses, and the constant changes going on from one end of the town to the other, affords them this facility of communication. Love of change and restlessness are the leading features in their character. After remaining two or three years in this calling, and their wants and expenditure increasing as they rise in years, one item of which is a female, they begin to look out for better business, by forming an alliance with a small party of pickpockets; but this is not always so easily accomplished, for the pickpockets are another class

altogether from the sneaks, and are not to be met with at the lodging-houses. They associate in parties of about three, four, or five, to commit crime, taking most special care to be thoroughly acquainted with the ability of all they admit to share in their adventures. The clever lads, of course, are selected first; others, as they grow up, follow various branches of the art of thieving, just as they can form acquaintances for confederacy and unity of action. Some go to starring, (working out a square of glass in a peculiar manner;) others continue sneaks, only varying their objects of attack, by which they obtain more money (vide under the head of Sneaks;) others get into the service of housebreakers;—all either meeting with employment as they rise in years, or transportation, except a few rescued for a time by the Society for the Refuge of the Destitute. From this statement, it appears that there is always in society a certain and a large number of boys, born of low parents, who are uneducated, and who, either by the early death of their parents, or their neglect, are thrown almost in infancy into the streets, either to pick up a living by stealing, or to starve,—

“ With none to check, and few to point in time  
The thousand paths that slope the way to crime ;”

and that these, as is the custom in all grades of the community, associate together, and enter into mutual compact for their general defence. Talk of schools! the world is their school, and every hour of their life spent in passing from one probation of crime to another; for the commencement of which no one but their God can, morally speaking, hold them responsible. And I question very much, should one of them, before or after having arrived at years of maturity, be desirous of becoming honest, whether it would be practicable for him to carry any resolution of this nature into effect without starving. They have, however, what St. Pierre calls one of “ nature’s compensations,” and are not troubled with a con-



science. They are never heard to say, "O, my offence is rank ; it smells to heaven." If we consider the physical and moral obstacles opposed to their reformation, no one will be surprised that all rogues are deemed incorrigible. Their whole course of life is a warfare against mankind. When young, they often get horsewhipped four or five times a day, by persons who prefer that mode of punishment to taking them before a magistrate ; and they frequently return to their lodgings at night without having had any thing to eat the whole day. This life would be unendurable were it not for companionship, and the only saving clause in their favour, that at night, when quite exhausted, and nearly starved, they are sure to meet with a commiserating friend, whose predations have been more successful than their own, and who never fails to share his crust with those to whom fortune has been less kind. During this period of their life, full one half their time is spent in prison, where they undergo divers kinds of punishment ; solitary confinement in a cell, flogging, and work at the treadmill. As they appear over and over again before the seat of justice, they are booked hardened offenders. This is a great mistake ; they are offenders, but not hardened. The generality of them, when young, are highly sensitive ; and, among themselves, they entertain all the amenities of which our natures are susceptible. They are deemed hardened because they resort to crime over and over again : the truth is, they have no other alternative. I have known many make serious and sincere resolutions of reformation ; but the abhorrence of inanition, so intimately interwoven with our natures, enforces the necessity of having recourse to the only mode to them open of supporting life. It is ludicrous to hear the talk about nurseries and places of tuition, as if establishments of this kind were instituted as boarding-schools are, and as public. The nurseries and schools are the places where they meet ; and they must congregate somewhere, unless, like the late Lord Barrymore, each member of our aris-

tocratical body will take one for a tiger. I will answer for their being quite enough on the town to supply them, and undertake to find them out too, in mere charity to the boys. To sum up all, they are placed in society just where they are by accident of birth, as almost the whole of its members are. When I say they from birth are placed in a situation so as to leave them no alternative but to steal or starve, I speak of them as a body: there are exceptions; and I am sorry to add, that many cases have come to my knowledge of parents teaching and sending out their own children to rob; and of others who, though they do not urge its commission, connive at it. I will adduce once instance, striking enough, and the truth of which I can safely avouch; it was told me by the boy's uncle, who, one morning, being at the lad's father's lodgings, when the boy came into the room, and seeing nothing to eat for breakfast but bread and butter on the table, he said,—“What! nothing for breakfast? Ah! wait a bit.” He then went out, and in a quarter of an hour came back with rump steaks and a pint of rum, besides having money in his pocket. He had gone out and stolen a piece of Irish linen from a shop on Ludgate Hill, took it to a buyer of stolen goods, and bought the articles he brought home, all in the short space of fifteen minutes; and this was not an uncommon thing for him to do, although his parents were not in need. The boy was at length transported when he was only fourteen years of age. He subsequently detailed to me all his practices, and how he got into crime. His parents resided in a court running out of the Old Bailey, and he had witnessed every execution which had taken place during his short career. So much for the effects of executions, as supposed to deter from crime; indeed, most of the boys engaged in crime appear to have a great pleasure in attending them: and I am thoroughly convinced, from the number I have conversed with on this subject, that the witnessing these scenes has not the slightest effect, as a terror on their mind, in deterring them from the

commission of crime. A question of greater importance cannot be propounded to the country at large, than how to dispose of this body of young sinners. They could all be apprehended in the course of a short time, and there are few people to interfere in their behalf; nor is there any thing to prevent their being disposed of, excepting the want of a law to authorize such a proceeding. If they were taken out of society, and secured in some place where they might be taught habits of industry, it would be a great blessing conferred on the boys, and an immense advantage to society in general, as the next generation of thieves would be cut off entirely; and, by substituting a more watchful system over these boys than the one now in use, the town might hope for an approach to an entire riddance of thieves in a few years.

The select committee on secondary punishments have, in their report, recommended that the extensive prison on Dartmoor, in which, during the late war, from nine thousand to eleven thousand French and American prisoners were confined, should be converted into a prison for convicts, to be trained to labour previously to their being sent out to the colonies. No doubt, this would be a very good application of that extensive place; but by no means comparable to its appropriation for the reception of these boys, where they might be taught trades and field-labour,—rendering them capable of getting their own living, by giving them habits of industry, and instructing them how to avoid a devious course in future. The place is not too capacious for the number they would have. It appears there is a railway communicating with the prison from Catwater, adjacent to Plymouth Harbour; the expense of conveying them by water would be trifling, and it would only require caravans to conduct them to their destination. Some countervailing plan must speedily be put in force to restrain these juveniles, whose increase is going on to a frightful extent. Without taking into consideration the interest of society at large, common humanity and charity

demand that something should be done for this numerous class.

If my suggestion be deemed worthy of notice, it would only require a law to empower the judges to pass a sentence of imprisonment, instead of transportation for a term of years. And, to save trouble and expense, the magistrates should be authorised to do the same on boys under fourteen years of age, with the consent of their parents; or, in the absence of any, on their own acquiescence, if they should prefer it to being sent for trial, when charged on oath of having committed a felony. And if the magistrate made the term of imprisonment somewhat less than the court, when they insisted on being committed, I have no hesitation in affirming, that a consent would be obtained in every two cases out of three. By the enactment of such a law, the expense of trial would be spared the country; and not only one, but oftentimes many trials. I have known some boys to have five and even six trials at the Old Bailey, besides others at Westminster and Clerkenwell sessions, at a cost together of probably forty or fifty pounds. Add to this, all the evils of their being at large in the intervals, and the expense of keeping them in custody for short terms of punishment.

I have spoken to some gentlemen on this subject, who object, that all the poor who are anxious to get rid of their children would send them to commit crime, for the purpose of obtaining a provision for them. To this I answer, how is it that they do not avail themselves of the sentence of transportation, which does the same thing as I propose, only not on so large a scale, by sending them to the *Euryalus* ship at Chatham, where they are all taught some trade, and, of course, provided for during the term of their sentence? It is true that many parents are found, even in open court, to solicit the judge for transportation to be passed on their sons, and there are more in private who express this desire; but my experience informs me, that the instances wherein it is done merely to rid

themselves of an encumbrance are very rare. That there are some such unnatural parents must be granted, but in most cases where this feeling has shown itself, it has arisen from the conduct of their offspring, whom they knew nothing would restrain from crime but a long course of discipline, to which they reluctantly consent, in the hope of saving them from the gallows; and in all such cases, the sooner the boy is taken out of society the better. I have had many conversations with parents so situated, and have witnessed the agony of feeling they have undergone in bringing themselves to such a state of resolution; and I can point out several instances of the judge refusing to comply with the request, when made in open court, under an idea of its being a bad precedent; but I have always seen these boys come back again for trial, by which means more crime has been committed—perhaps others made criminal—and the county put to more expense.

Now I am on this subject, I cannot but make an effort to call the attention of the legislature to the manner in which the boys are managed on board the hulk at Chatham, where from five hundred to eight hundred boys are kept. If there be any regular and established schools for teaching crime, the ship *Euryalus* is the place. From this college (the thieves themselves call it so) comes the chief of the housebreakers. The want of room to accommodate so many, occasions their being placed in wards, where thirty or forty sleep together; and as they are, for young ones, of the very worst description of offenders, the consequence may easily be imagined. They are not, as regards moral improvement, in any better situation than when sleeping at their lodging-houses in London: the whole system of their management and treatment calls for a revision.\* This, however, cannot be done, without the construction of a place sufficiently large for their reception. Separate compartments for sleeping are absolutely necessary,

\* It is gratifying to the author to learn, that since this hint was first published an order has been given to break up this establishment.

in furtherance of their moral improvement, and the desuetude of the cat-o'-nine tails, which does more harm than any other part of the system in the treatment of these boys. Different kind of officers are wanted; naval men are the least of all qualified for this duty—they talk of nothing but severe discipline, and good behaviour enforced by coercion, disregarding their moral condition *in toto*. They fancy they have morally improved them, when, by severity, they have reduced them into a system of good order; all of which every one at all skilled in the human mind must know is an egregious mistake.

“Hast thou no feeling save the external sense  
Of torture from the touch? Hast thou no soul?”

These boys are capable of receiving impressions, and are as susceptible of sentiments of gratitude as any lord's son, if the proper treatment were used to draw them out. It is only by cultivating the better feelings of our nature that any human beings can be improved: all other systems are fallacious, and founded in gross error. When the sneak comes into the hands of the pickpocket, he is instructed and practised every hour of the day, until made tolerably perfect; he is then taken into the streets, to make his first essay in the presence of those who have taught: and it has been given in evidence, that they dress up a *lay* figure, hanging bells all over it, on which they practise. When the tyro can empty all the pockets of the figure, without occasioning a bell to sound, he is considered fit for the street. He generally begins with a pocket-handkerchief, whilst another takes “ding,” that is, receives it from him. In almost all cases of robbery, one commits the act and another receives the article from the thief, which is called taking “ding.” If they find a boy dull, they forthwith turn him out of their party.

A case of this kind came to my knowledge. Four pickpockets who had taken a boy on trial discharged him the

second evening after he had joined them, as being incompetent to the business. The boy, chagrined and disappointed, returned to his fellow-sneaks, at a lodging-house in St. Giles's, and told them his story; adding, that the pickpockets were about to have that evening a jollification, and that a supper was prepared, one item in the bill of fare being a rice-pudding, then at the bakehouse. The boys soon came to an understanding that they could eat rice-pudding as well as the pickpockets; and it was agreed that the discharged boy, although deemed a bad conveyancer,\* should convey the pudding out of their reach, by going to the bakehouse and asking for it in their name. The real owners made the baker pay for it, and, suspecting who had had it, gave information, which caused the boy to be apprehended and committed to Newgate, where he was found guilty of stealing it, and sentenced to be flogged and discharged, on the evidence of these fellows and the baker. A few months afterwards the boy was brought back for another offence, and transported for fourteen years. When, however, they meet with a clever lad, they know how to prize him, and take care to gratify his every wish, that he may be induced to stay with them. These boys, as soon as perfect, are made to do nearly all the business themselves, whilst the master pickpocket walks behind to cover them, watching the operations, and, as much as possible, avoiding any interference, and, consequently, risk on his part.

It is an incontrovertible fact, that there are in this metropolis numerous knots of pickpockets who have passed through a long career, and lived, too, in apparent respectability, by the agency of these boys, without incurring on their own part comparatively any risk of detection; for if each master were deprived of his little Mercury twice a-day, by their being detected and placed in custody, the supply from the great body of sneaks is so great and regular, that the places are filled up as soon as vacant. Every day in the year

\* Pickpocket.

(Sundays excepted) boys are committed to Newgate under these circumstances, whilst the principals in the crime go at large, to engage others in it. Sometimes, when these Mercurial agents are seized in the act of picking a pocket, and there is no officer at hand, these fellows will go up (being generally well dressed) and exclaim, "The young rascal! O secure him!" then, under the pretence of holding him, favour his escape.

The qualifications for a pickpocket are a light tread, a delicate sense of touch, combined with firm nerves. These boys may be known by their shoes in the street; they generally wear pumps, or shoes of a very light make, having long quarters. There is about their countenances an affected determination of purpose, and they walk forward, as if bent on some object of business: it is a rule with them never to stop in the street. When they want to confer for a moment they drop into some by-court or alley, where they will fix on an object of attack, as the people pass down a main street; when they start off in the same manner, the boy going first, to do what they call "stunning," that is, to pick the pocket. The first-rate hands never, on any occasion, loiter in the streets, unless at a procession, or any exhibition, when there is an excuse for so doing. Many have a notion that instruments are used in disencumbering the pockets: this is a false idea; the only instrument they use is a good pair of small scissors, and which will always be found on the person of a pickpocket when searched: these they use to cut the pocket and all off, when they cannot abstract its contents.

To these qualifications they unite a quick sight, and a tact of observing when the attention is engaged, or of devising some means to engage it themselves, until the act is done. They are most busy in foggy weather. When in prison, they will be heard to say on such days, "What a shame to lose such a fine day as this!" On great public days, when the streets are expected to be crowded, and much business is an-



anticipated, several parties of them will unite for the day, under special contract, either to divide all gains between them, or for each one to retain what he gets, agreeing, under every circumstance, to mutually assist each other in the bustle of the crowd. The wary and superior pickpocket, however, seldom runs this risk, but steadily pursues his course, surveying every day the objects around him, and sending off his emissaries to fetch in the plunder, or, by detection, to be handed off to prison. Pickpockets are the least faithful to each other of all known rogues, and are the most difficult of all biped animals to tame, or make any thing of in the way of improvement when caught.

## SECTION V.

### SNEAKS.

HAVING so fully, under the head of pickpockets, described the large number of young rogues there are in the metropolis, and shown that from this body the town and country are supplied with offenders of all kinds, it will be only necessary for me to describe the furtive practice as one of the crimes enumerated at the head of this paper. In the progress of my acquiring a knowledge of the extent of the commission of crime, at no time was my astonishment so much excited as when I learnt the extent of this practice, and the large sums of money obtained by it. These public robbers, like the others, associate in small bands, who go about the town finding out attackable places, of which they keep a list; that is, places which are good, or open to robbery. When an old and good

neak is committed to prison, where he is generally without money, (the officers, on apprehending him, having taken it from him until after trial,) many offers of liberal premiums are sure to be made him for his list of places capable of being robbed, which means nothing more than a list of names and residences of the careless and incautious tradesmen in and about London.

After a shop has twice or three times been robbed of considerable sums, the sneaks consider it good again and again—such is the extreme incaution of some persons. Butchers have been favourite objects of attack, in consequence of their shops being generally vacated in the afternoon, and the master or man in the parlour taking a *siesta*—a common practice of theirs, after the fatigues of early rising and labour. One butcher, at Bermondsey, was three times robbed of considerable sums in this way, before he would remove his cash from a desk in the front-shop. The boy who got it used to watch him, in the afternoon, close the door, and retire into the back-room; then jump over the stall-board—there being no glass-sashes to prevent his entrance—and sneak down on his hands and knees, until he saw an opportunity of wrenching the lock; for which purpose he always carried a *prising* instrument in his pocket. The same boy three times carried off a charity-box, containing thirty pounds each time, from a house near Greenwich. He had ascertained the time it was brought, and for what purpose, to a gentleman's house; and he laid his plans so well, that after they had lost two, and when every caution would have been expected on the part of the owner, he succeeded in stealing the box a third time.

Their usual plan is to note those shops where bulks of money are kept in tills, or desks, in a front shop or parlour; next, to ascertain the movements of the family; and if they find, by continual watching, that the people of the shop retire at certain times to meals, or in the evening to the

parlour for comfort, one will softly open the door, letting in a boy, who crawls on his hands and knees round the counter, and takes the contents of the till: the persons in the parlour, probably, all the time keeping their eyes on the shop, but never think of rising up to look on the ground. These are denominated lob-sneaks, and their practice has been very successful. By timing their attack, and selecting the right places, I have been assured of 200*l.* and 300*l.* in a week being obtained by one man and a boy. In this case, as in the other, the man's risk of detection is very little; he opens the door, and stands ready to favour the boy's escape, should any alarm be given, but touches no money until they are both in a place of security: and it will be seen that the Old Bailey calendar abounds with the trials of *boy* lob-sneaks, but no men, although in every case a man has been concerned in the robbery.

There is a boy now in the penitentiary, who was under sentence of death for stealing fifty-three pounds from a till, with which he got off. When he knew where there was money, he would be sure almost of it; such was his talent and determination. In this latter case, the money was stolen from a corn-chandler's till. The boy went into the shop, and, by asking for some article, contrived to send the master of the shop some little distance from the counter, when he suddenly reached over, took the money, and ran off; his confederates being near the door. The loser of the cash ran after the boy, when he was, as it were, thrown down by accident, and the boy got off. As they were afterwards going down the Hackney-road, one of his companions called out, in a joke, "Ding! ding!" meaning, throw away! throw away! This was done to alarm him, and have a laugh at his expense. The boy, however, took the call as being a serious one, and threw the bag and its contents into a garden, and ran off; finding his mistake, he went back at night to recover it, when he was taken into custody; the owner, in the interval, having been found.

In this, as in the last crime, so long as the body of young sneaks are unbroken, so long will there always be men to make use of them. Next to the want of a better system of management at the Old Bailey, of distinguishing which are and which are not the old offenders, nothing can be more censurable than the allowing this race of young, wretched, and misled boys to remain in full force against the public. Every lodging-house is a nucleus, which would, in a town of this magnitude, train up a whole nation of young sneaks and pick-pockets; yet there are our *quidnuncs*, standing in the midst of the scene, inquiring for the schools where these boys are taught to steal, and talking about prison contamination. Why, the society of a prison, and that of the lodging-houses, and the flash-houses of resort, are one and the same; all of which deserve equal attention, for the purpose of moral correction. How are we to account for the unilateral view taken by the legislature of these matters? I should weary the patience of my readers were I to detail the evidences taken before the select committee on this subject of contamination, and the necessity of providing prisons so constructed as to have separate compartments, to preserve these immaculate personages from corruption of morals. Mr. Wontner underwent a long examination on this subject, all of which just amounted to nothing; and I blame Mr. W. that he did not spare their time and his own, by telling them at once that corruption had done her work before they came into his hands, and then have pointed his finger towards St. Giles-in-the-Fields, and the neighbourhood of Whitechapel, with many other low neighbourhoods lying between these holy lands, as the thieves call them, where they might go and see the system of corruption and contamination in full operation.

In very many cases I can prove, that association in prison has been productive of improvement of the mind; and I have ever thought, that the more the mind is enlarged, the farther is it removed from crime. But the assorting and arranging

the prisoners for this purpose must be managed with great judgment, and by persons appointed for the purpose, possessing a thorough knowledge of the human mind. The keepers should have nothing to do with this part of the business; their duty is of a mere routine nature, appertaining more to the security of the prisoners than their improvement. The ignorant and least guilty should be classed, taking care that in each party there should be two or three of some education—and such are always to be found amongst them—allowing them books, in their leisure hours, of an instructive kind.

In the neighbourhoods where most of the offenders have been brought up, vice is found in a concrete and concentrated form, contaminating, like a universal miasmata, all who breathe the pestilential vapours. The influences on our moral natures are slow but sure, like a vortex or whirlpool. Vicious examples draw but slowly at the outer circle, increasing at every completion of each concentric ring, until they are drawn at length rapidly down, never to rise again. Governments may be considered great and useful only as they direct the moral influences of the population over which they rule. In this country we have penal statutes enough, arithmetically considered, to serve all other nations inhabiting the whole globe; but not a solitary enactment is there calculated to alter the moral condition of man, by protecting him against the influences of a vicious education, if we except the church establishment, and the king's proclamation at the commencement of his reign, commanding all his trusty and well-beloved bishops, &c., to encourage virtue and repress vice, with a no-meaning and non-effective preamble, which only excites the risible faculties of all who trouble themselves with the reading of it.

No effort is made to morally educate the poor. I shall be reminded of the national schools, where they are taught reading, and there left. They should put fire-arms into their hands, and desire the children to use them at their own dis-

cretion. What should we say of a carpenter, who, having undertaken to teach a boy his trade, if he only showed him all the tools by which the business was performed, and who gave the lad no other instruction; would he make a carpenter? Yet this is what the national schools do: they have entirely mistaken the means for the end. They call furnishing the tools for education—that is, teaching them signs or words, by which it may be obtained—education itself. They give no moral instruction, nor do they take any moral charge of them; but in crowded and low neighbourhoods, by sound of tocsin, they collect all the young, vulgar, and untaught children together, that they may corrupt each other, and thus render the whole of one character. No good they have done in teaching words can ever counterbalance this mischief that they have inflicted on society. This *en passant*. My business is with the children of thieves and abandoned women, many of whom do join for a time the Lancasterian schools, and spread contamination by degrees far and wide.

If the government will adopt my plan, and stand *loco parentis*, and that at an early age, taking them at once, when they first commit crime, out of the contaminating influence of the scenes they are brought up in, twenty years would work a wonderful change in our criminal history. The more the instances of crime, the more there always is likely to be, in an increasing and dense population, unless some countervailing measures are adopted; and what plan can be better than, by one effort, to weed society of the teachers of ill-doings, and thus give the next generation a chance of growing up without so many evil examples as they now have to draw them into crime? If a born thief lives, and is at large (what they call being on the town) till he is twelve years of age, he draws, on moderate calculation, ten others into crime annually, who are his neighbours, not the sons of thieves, or of those who would have them thieves, but the offspring of parents who have neither time nor means of putting any restraint on them,

as to their associates, during their own absence from home, which is generally from morning to night. From twelve to twenty years of age he will seduce, each year, four or five of his own age, heretofore quite unused to crime, besides the encouragement he the whole time gives to the body of sneaks; putting away, perhaps, twenty annually of those in which he had no participation in making criminals, further than the encouragement he gives to the general body of sneaks, from whence he draws his auxiliaries.

It will be seen from this statement, which is founded on indisputable data, that the mischiefs of contamination are as three to one from the ages of five to twelve, as compared to the ages of twelve to twenty. This fact alone proves the necessity of going to the root of the evil, and attacking crime in its infancy. As there will always be some boys the parents of whom are a remove or two from the poorer classes, who have been drawn into the gulf of crime, it might perhaps be advisable to invest the judge with a discretionary power, to take security for the future conduct of such boys as belong to those who could command it; and thus throw the burden of responsibility on the parent, stimulating him to exercise a more watchful guardianship over the conduct of his children. This privilege, of course, should not be granted to any exceeding fourteen years of age. When the duties of a parent are considered, and the lax hold many of our respectable tradesmen have of their children, I think, if the compulsory measure towards the parent were carried further, it would be beneficial, not only to society, but to both parent and son. If, when gross neglect was proved, by which society became in danger of having a pauper or a thief added to her numbers, and there were parents who could, but would not, do their duty, then I say they should be made to enter into security that their children should not commit crime, under penalties such as may be deemed efficient for the purpose. No police would be required to perform this

duty. In every walk of life all are not bad, some virtue is still extant among the lowest of the low ; and if there were a power given to magistrates of this nature, in every neighbourhood some parents would be found having a better sense of their own duty, who would watch the conduct and give information of the total neglect of these duties in their neighbours. The shocking sufferings and privations some boys undergo in this metropolis by the neglect of parents are incredible ; were one-hundredth part collected and stated in detail, it would harrow up the soul of all who read the statement. Many are lying on the mat of the door, on the stairs of their parents' lodgings, half the night, waiting until they come home drunk and out of temper ; when, perhaps, the boy is kicked into the street, there to spend the night, until at length he is driven to join the sneaks at their lodging-houses, and the next day commences thief.

## SECTION VI.

## THE SHOPLIFTER.

THE shoplifters are much less to be dreaded than the sneak, as they do not carry off cash, and rarely any very valuable property ; they have, however, lately hit on a scheme which has proved successful in numerous instances. Noting a shop where goods are piled on the counter, or within reach, a man goes in called a bouncer, and generally asks to look at some handkerchiefs, selecting a time when there is only one shopman in the way—breakfast-time for instance ; whilst this is going on, a well-dressed youth comes in with a blue bag in his hand, asking for shoe-ties, or some trifling article. Now



the work begins ; the man engages the attention of the shopman as fully as possible, by talking of buying largely, and by opening the handkerchiefs, or other goods, and so spreading them as to blind the eyes of the shopman, and screen the movements of the boy, who, during this time, is putting as many of the most valuable goods into his bag as he can lay his hands on ; then pretending he cannot wait, leaves the shop. This scheme has had a great run among the shop-bouncers, as has that of taking a boy in with them, when they first go into the shop, who, whilst the same examination of the goods is going on, contrives to put three or four pieces of handkerchiefs into the man's hat, which has been previously laid on the counter for the purpose. The other methods of shoplifting are too well known to require any further description of mine.

It cannot be too often enforced on the shopkeeper, that these men know the places which are good for this purpose, and that careless people will always have an abundance of customers of this kind, and that it is their own fault, in all cases of shoplifting, when they lose their goods.

## SECTION VII.

### SNATCHERS OF RETICULES, WATCHES, &c.

THESE are but a more desperate and daring kind of pick-pocket, who want temper<sup>d</sup> and talent to go more circumspectly about their business, and cannot be carried on very well unless the thief has a neighbourhood of his own to cover his retreat. I witnessed, a few days since, a most daring act of this kind.

A gentleman passing the end of Tottenham-court-road, St. Giles's, took out a valuable gold watch to see the time, when a fellow snatched it from his hand, and ran away with it: all efforts to take him were ineffectual, as he got into some of the low back streets where no one would venture to follow him. What the boys call soot-bag hunting, was once a pursuit behind coaches, where they would get up and seize any lady's bag which was in their reach, with which, as the coach was going on, they would be sure to get off.

## SECTION VIII.

### STARRERS.

THIS is a crime which comes under the head of housebreaking, as in law an entry has been made through the broken glass. With a pointed and well-tempered knife, one of them picks a hole by scraping out the putty, whilst another stands before the one so employed; when this is done, and the knife can be got under the glass, the operator waits the most favourable moment, which is the most noisy one, when carriages or waggons are passing; he then uses the knife as a lever, the frame itself being the fulcrum, and by a sudden jerk of the hand, stars the glass, dividing it in two, by causing it to crack from top to bottom: at the moment of doing this they run away, for fear of being heard in the shop. If this has been done well and not heard, they come back, after a time, "to work it out," (get it quite loose,) ready to take out in the evening; a time they generally select to finish the business, by carrying off all within reach of the opening so made

The practitioners in this offence make frequent journeys to large towns in parties of four or five, working at different shops in the town at the same time. Instances of their success have been so great, that one summer a party of starrers kept a member of the gang wholly employed in travelling to and from town to dispose of the property to the buyers of stolen goods. In one instance, a silversmith from Brighton absolutely sate beside a boy on the coach who had, between his legs, a bag-full of property which had the day previously been stolen from the said silversmith's window by starring, and who was then coming to town in consequence of the loss. It happened, as the coach came over Brixton-hill, Mr. Green, the keeper of Brixton prison, stopped the coach for the purpose of riding to town: as the thief had been a short time before under the surveillance of Mr. Green, he became alarmed, and before he was seen by him, got off the coach, saying, he was arrived at his journey's end; and he carried off the whole of the goods, among which were eleven valuable gold watches. Would it not be an improvement in our police establishment, if persons were appointed to take cognizance of all coaches as they went in and out of town, being careful that the parties appointed to do this duty should be well acquainted with the town criminals in general? Many are the advantages which would accrue from the adoption of such a plan, which, I think, are too obvious to require pointing out.

Jewellers suffer by another kind of robber, called *pinchers*. Men of good exterior appearance, having previously practised themselves in the art of sleight of hand, visit shops, and under the pretence of becoming a customer, convey from the cards of jewellery handed them for inspection, as many valuables as they can, up their sleeve.

## SECTION IX.

## HORSE AND CATTLE STEALERS.

THERE was, at one time, a very formidable gang of horse-stealers, who spread themselves all over the country, and, for a long period, carried on successfully their depredations; but there is now no reason to suppose there is much confederacy in this crime, or, indeed, that there are any regular horse-stealers; all the instances of this offence being, like the highway robber, casual. But it is not so with sheep and cattle-stealers. Smithfield market is frequented by many who are in connexion with persons in the country, who carry on their depredations to some extent, and in various ways. There are men in the country who are in confederacy with others in town, and the drovers on the road, who, of course, are going to and from the country constantly with large flocks of sheep, or herds of cattle. The thief, availing himself of the darkness, drives into these flocks or herds the sheep or cattle belonging to other persons; in the course of a long journey this may be done at many places on the road. As they reach town they have persons ready to separate the stolen ones, and dispose of them to certain little master-butchers who are in the secret, and consequently obtain them much cheaper than at the usual market-price. The grazier and farmer suffer most with their sheep, the stealing of which always was, and, I imagine, will be, a crime of frequent recurrence in this country; and for the prevention of which every practicable measure appears to have been adopted without effect.

Should my suggestion of a police force being blended with the turnpike system be adopted, I should recommend a pass

being given to the drovers, which should, at every stage throughout the line of road the cattle travelled, be examined and endorsed by a proper officer. The pass, in the first instance, should be signed by the resident magistrate of the parish whence the cattle or sheep came, describing the number and marks on the same, and stating the owner's name and residence. This measure would at once be an effectual check on the drovers, through whose means the sheep-stealers now carry on their robberies. The drovers take charge of several parties' sheep, uniting them in one flock until they reach town, when they are separated, and consigned to a salesman. This practice offers no obstacle to my proposition, as each owner should be compelled to send his pass for the number of cattle committed to the charge of the drover. This I conceive to be an arrangement under which stolen sheep and cattle could never reach town; at least, the risk of detection would be multiplied a hundred fold, and certain it is, no wholesale plunder could be carried on. I defended three men who drove seventy-five sheep from a man's field in one night; they all reached town, and were sold, but the men were afterwards recognized and prosecuted. If a precaution of the kind I propose had been in these men's way, how could they possibly have passed up the road? The passes should be printed forms, having a peculiar mark for each district; and perhaps it would be better if a person were appointed to fill them up and deliver them to the farmers and graziers in his neighbourhood, without having recourse to a magistrate, which might be thought too troublesome. He who performed this duty should be paid by those who applied for them; their property would be, as it were, insured by this system being enforced; and they could not very well complain at a trifling insurance being exacted from them. The same persons who performed this duty might also execute another of equal importance, and of essential benefit to the public.

Horse-stealing, although not carried on in a wholesale man-

ner by confederacy of large gangs, yet is a crime of very frequent occurrence throughout England ; the offenders stealing in one county and disposing of them in another. To put a stop to this practice, I propose that an act of parliament should be passed to compel all buyers and sellers of horses, jointly and severally, to register the sale of each horse, with both their names, places of residence, and occupations, also the sum for which the horse was sold, with a full description of him, under a penalty of forfeiture of money hereafter to be named. Suppose this act in force, and a stranger had a horse to sell, for which there was a purchaser, would not he, (the purchaser,) for his own security, before he paid over the purchase-money, see the registration performed ? and would the seller, think ye, if he had stolen the horse, or purchased him knowing him to be stolen, venture to the register office, where, in all probability, would be sent an account of the lost horse, with his description, &c. &c. ? Here, then, is at one stroke a stop put to all stolen horses throughout the country ; and this desideratum would perhaps be attained for the small charge of one shilling each person who either bought or sold a horse. If persons were appointed in each district to manage the passes of cattle, they would, at the same time, be the very persons calculated to register the sale of horses ; and it might be found, after a time, desirable to extend the registration to the sale of all descriptions of cattle. Besides, it is obvious to any acute mind to how many other purposes of prevention of crime these offices might be applied ; I could mention several of as great importance as the cattle and horse-stealing, were it not that I consider this paper more devoted to the description of crime than for going largely into the prevention system, which I have reserved for a work of itself.\*

\* Since writing the above, I have myself been called on to give evidence in a case wherein a man hired a horse and chaise at the west end of the town, and immediately afterwards sold it in Southwark. If such a sale register-office had been open, this crime could never have been committed.

It is a truism in this country, that all the legislative bodies have done, at any period of our history, has not in the slightest degree retarded the progress of crime; and I may fearlessly challenge all the members of the Houses of Lords and Commons to prove, that the majority of our really useful and beneficial laws have not been forced on their attention by the public at large, who, feeling where the shoe pinches, are the first to cry out and direct the legislative eye to the defect. Conscious of this, in common with all others who take the trouble to examine these matters, I cannot allow this subject to pass my pen without offering those who are, or ought to be, interested in the preservation of property from depredations, my assurances of a conviction on my mind, that the measures above proposed, would, if brought into effective operation, entirely annihilate, and strike out of our criminal annals, two very heavy crimes; viz. sheep-stealing and horse-stealing. To give more certainty to the effect of this plan, the post-office should grant free post of letters when directed from or going to these offices throughout the kingdom, for the purpose of circulating an account of lost horses or cattle.

This intimation of forming a road, or toll-gate, police was first published in November, 1832. Since which I have learned, through the secretary's office, that some persons are now travelling the country under the authority of government, to collect information and report thereon, with a view of establishing a branch police throughout the country. With our rapid means for internal national communication, an entire line of co-operative police might certainly be effectively and permanently constructed. Perhaps the most economical and efficient measure for the government to adopt, will be for them to pass an act of parliament to compel the commissioners on all main roads to build cottages or huts, at the distance of one mile from each other, for the residence of a man and his family. Men thus placed might be made constables, and yet be employed in repairing their mile of road :

and, when established, neither accident nor robbery could happen at a farther distance than a half mile, whence assistance might always be procured.

## SECTION X.

## S W I N D L E R S.

THE tricks and practice of all the swindlers cannot possibly have insertion here, for want of room, without excluding other interesting matter. There is one set, however, of swindlers now in active business who cannot be too much exposed; no opportunity should be lost in giving publicity to their nefarious conduct, and to caution all persons against falling into their snares. There are, at this moment, a large number of persons who, without possessing any means, or having any connexions by which they can raise money to lend, yet unblushingly advertise every day to raise money to any amount, and to discount bills to an unlimited extent. The object of these fellows is to obtain good securities, under pretence of advancing money, which, when once in their hands, are never returned. The applicant is put off from day to day with plausible but shuffling excuses, until at length he is induced, under fear of losing the value of his securities deposited in their hands, to take some other counter documents to hold until his own is returned, or the money paid, as first agreed on. Whilst this is going on, the valid securities are converted into money, by selling the papers probably for half price, which the swindlers pocket, leaving their dupe with some imaginary security, but of no value. In law, the exchange



of these papers takes away the felonious part of the transaction. A case which came under my knowledge will, I think, better convey to the reader their mode of proceeding than any further remarks of my own. A man who was confined within the rules of the King's Bench, advertised to advance money to any extent, referring applicants to an office he had in town; the first day's advertisement brought a very respectable tradesman from the neighbourhood of Parliament Street, who wanted 500*l.* on loan, for the purpose of repairing his premises and extending his trade. He was immediately promised the money, the advertiser having left the rules, in which he ought to have remained, for the purpose of meeting the applicant. Two bills were drawn of 250*l.* each, and the endorsement of his mother procured, who was a retired lady on a confined income; in addition to this, the lease of his premises was demanded as a collateral security. Day after day objections of a frivolous nature to the several clauses in the lease were raised, and when this evasion was worn out, other excuses were resorted to, until the swindler one day said—"As the gentleman from whom I was to have had the money is out of town, and you are in a hurry for it, if you will take my own acceptances, which I will you for the amount, down to a certain house, they will give you the cash for them; but first let us have a memorandum of our having exchanged bills to the amount of 500*l.*" An agreement of that nature was accordingly drawn up and signed; the unfortunate tradesman soon discovered that no money could be raised on these bills, and the affair ended by his being obliged to pay his own 500*l.* without ever having a farthing from the cheating party; and, to add to his misfortune, he indicted the swindler, employing Mr. H——r to conduct the prosecution; the case was traversed, and ultimately brought before the Lord Chief Justice in the King's Bench, when it was decided, that the agreement for the exchange of bills made it a fair, trading,

common contracting transaction; thus having a heavy bill of law charges to pay in addition to his loss of 500*l*.

Similar tricks are every day played off on his majesty's liege subjects, and is a mischief for which it seems absolutely necessary that a law should be directed against. The money-lenders who prey on the vitals of young men of property who lose their money at play, or in expensive amusements,\* and then borrow at exorbitant and usurious interest, are a great pest to society, but the direct swindler should unquestionably be put down. The common law has defined the offence of cheating to be, *a deceitful practice in defrauding, or endeavouring to defraud another, of his own right, by means of some artful device, contrary to the plain rules of common honesty*. The statute of the 33rd of Henry VIII. c. 1, declares, "That if any person shall falsely or deceitfully obtain, or get into his hands or possession, any money, goods, &c. of any other person, by colour or means of any false privy taken, or counterfeit letter, &c. he shall be punished by imprisonment, the pillory, or whipping." Thus stood the law until the 30th George II. c. 24, when the offence was made transportable for the term of seven years. It would seem, by the unrestrained practices of these men, that the above enactments are not strong enough to put them down; it is the duty then of the government to enact others. Some swindling transactions through the medium of betting are daily practised, which require the interposition of the law, if all persons are to have the benefit of its protection. There are a certain set of men, who, through confederacy, obtain a living by devising questions to cheat persons of money in making bets. Two cases will illustrate this practice, the truth of which there are a number of living dupes to attest. Three men travelled the country and supported themselves in extravagance for nearly three years by the word—*infortunate*. When they entered a town they took up their abode at separate inns, or public-houses, as if unknown to each other; they then frequented

the rooms where the tradesmen of the place resorted to enjoy themselves, where they would wait an opportunity for a full room of company, in a state of hilarity and super-excitement; the word *infortunate* would then be used by one of the confederates in some purposely constructed sentence, the correctness of which would be immediately questioned by another of the party, and bets to a pretended large amount staked on both sides, as to whether or not it was a dictionary word. It was the object of these itinerant swindlers, in the course of their affected controversy, to draw in all the persons composing the party to oppose, and lay wagers, that there is no such word as *infortunate* in the English language. When this was accomplished, a dictionary was called for, and the word pointed out to the assumed surprise of the confederates, whilst the man, learned in dictionary lore, pocketed the cash. Simple as this mode of raising money may appear, it had a great run in the country. It is not to be supposed that these men lived solely on this bet; it was, however, their stock piece, and main dependence, each party having always similar newly invented quibbling questions to travel with. In another instance two men met with equal success by raising a question in their peregrinations of whether the town of Henley upon Thames is situated on the London side of that river, or on the other. Many have lost their money on this wager; those simpletons who know the town, and recollect passing from London over the bridge into the town, say it is situated on the opposite side of the river; some have been found foolish enough to stake 100*l.* on this wager, forgetting that on their road from town, they had before crossed the Thames at Maidenhead bridge, and that when they re-crossed it at Henley, that they came back to the same side of the river as that from which they started. Let not the wise man smile at these tricks as being improbable or impossible. The number of incautious persons to be met with in this country is but little conceived by those whose sphere of action are confined to a

*coterie*. It should be remembered that it is the fools, in every country, which most need protection from the government ; for this reason, I say, such tricks as are here alluded to should be included in our laws, as swindling transactions. The vice of gaming, and the toleration of open gaming-houses, supply this metropolis with all its sharpers and swindlers, who are the froth of these infernal sinks of vice. Men, once respectable, after losing their money, drop in character and habits, associating with a lower description of fellows, addicted to the same debasing vice, till they pass through all the demoralizing company and night-scenes of the town, after which there is no restraint on the conscience, nor is there any return to virtue until the loss of health, or the law, brings on the prospect of death, and a remorse of conscience, which is the result of despair, not a voluntary and sincere contrition. Criminals born, and educated as such, and those made criminals through the gradations of gambling-houses, are the only offenders against the law, of which, under a proper system, we may not reasonably hope for a reformation. Sensitive minds, by the practice of this vice, either become maniacs or suicides ; those possessing more hebetude, undergo, in every stage, the process of callidity and callosification, until they become hardened and tempered for every act of desperation against the laws of their country, and the social bonds of society. Rulers ! depend on this fact, that until you suppress public gaming-houses you cannot effectually cope with crime, even if you, as recommended in another part of this work, adopt the necessary measures to dispose of all the metropolitan habitual rogues. In time, the exudation of gambling-houses, if not annihilated, would rear up another race of public depredators. The apathy of our rules on the subject of gaming-houses is highly reprehensible, the keepers of which cannot be looked on in any other light than swindlers, when it is known that the immense sum of 40,000*l.* has been made within the last two years by one man in St. James's Street ;

and when it is considered how many sufferers there must have been to have made up this sum, what possible excuse can there be for allowing such nuisances to exist? There are many secrets to be told of this house, and it shall not be my fault if the world are not possessed of them.\*

## SECTION XI.

### MEN AND WOMEN WHO WAYLAY INEBRIATE PERSONS FOR THE PURPOSES OF ROBBERY.

THIS is a crime of frequent occurrence in London; not a night passes but many suffer through these wretches, and their fellows, who are ever at hand to aid in the commission of the offence. No regular practised crime passes off with so much impunity as this ramping, which is the technical term for robbing a drunken man, and dispossessing those of their money who have been indiscreet enough "to put an enemy into their mouth to steal away their brains." In almost every case of this kind the parties would rather pay as much more as that which they have lost, than expose their in-

\* The keeper of this house, B—d, is now (April, 1833) under a prosecution for keeping a public gaming-house, contrary to the statute, &c. This man took his house of the creditors of a swindler, named E \* \* \* l, who is now transported. He contracted to pay them 50*l.* per month for it; they received four payments, amounting to 200*l.*, since which he has continued to set them all at defiance, and pays no rent for a house in which he has been enabled to swindle hundreds. He took the premises in November, 1830, when he was known to be a needy man. Now, no man in Rotten Row figures with finer horses, or assumes more consequence than this fellow does, who sprang through his tricks from poverty to wealth.

discretions to the world ; besides, in most instances, the difficulty of identifying the guilty persons is very great. The prosecutor being robbed in a state of insensibility, his evidence, even if he were disposed to give it, would be received with doubt, as it is generally given with incertitude. Hundreds of women of the above description walk the whole night through, waiting and lurking about certain houses where they know drinking company resort,—

“ Where revel calls, and laughter vainly loud,  
False to the heart, distorts the hollow cheek,  
To leave the flagging spirit doubly weak.”

They have always one or two male associates each, who follow at some little distance, ready to pounce on their prey when decoyed into the snare ; that is, some remote place where there is little danger of any interruption. Most frequently it is in some house into which the unconscious inebriate is often passively and unresistingly led. These houses are very numerous in London, and are well known. There are many in the neighbourhood of Drury Lane. At one time there were ten or twelve in and about White-hart Yard. It excites every person's astonishment that they should be allowed to exist when they are so well known and pointed out. Mr. Thomas, the active officer in St. Paul's, Covent-garden, has often mentioned them publicly before the sitting magistrates, but as they have no legal power to put them down, all that can be done is, to instruct the police force to keep a watchful eye over them. In these places girls of nine and ten years of age may be seen playing their meretricious gambols. An enactment might surely be made to reach these dens of danger and wickedness, as also the lodging-houses where the young sneaks associate, without alarming the sensitive nerves of the most rigid stickler for John Bull's liberty. In the absence of any proposals for a legislative measure to remedy this evil, I will offer one of my own.

I propose that the parish authorities, magistrates, or some other constituted power, should, by enactment, be enabled to summon any housekeeper in their district before him or them, to answer any questions which may be put regarding the trade, calling, or occupation, of the said housekeeper, and in the fullest manner to examine him or her as to the means by which he or she obtained their living; first having two affidavits lodged with the said power, sworn by housekeepers of the same parish, setting forth their suspicions on each, that the house or houses named in their depositions were illegally conducted or occupied for purposes contrary to law. Of course, in the act passed, having in view the suppression of houses occupied by thieves, whether males or females, the legal and illegal uses of premises in general would be well defined, and consequently could not interfere with the honest and respectable man; nor, indeed, with any man, poor or rich, honest or dishonest, further than as to the legal uses to which he or she appropriated any premises belonging to or hired by them. It would not be advisable to place in the hands of this citing power any further authority than to declare the illegal or legal fact of occupation, and to hold the parties to bail for their appearance to answer any ulterior proceedings which might be followed up by the parish officers. Whatever might be the nature of the authority before which it might be deemed proper, as a preliminary step, the accused should be summoned, it should be the duty of the parish officers to prosecute, and bring forward evidence to substantiate the charge of illegal appropriation of premises. Should a conviction take place, the bench must be empowered to send in an officer to remain on the premises until the same were either vacated or transferred into other hands, who should give security for using the house only for purposes of a legal nature, at least for twelve months. This latter provision would be a just punishment on the landlords, who, in almost every case, are privy to

the bad appropriation of premises. In the adoption of this measure may be seen the effectual and entire annihilation of public gambling-houses, if the inhabitants and parish officers did their duty ; and there can be no doubt but generally they are well disposed to do so, if government will but arm them by legislative acts of authorisation.

Without offending the modesty of the most fastidious of my readers, I hope I may be allowed to say a word or two on brothels in general. I am one of those strange beings who believe, that, were these houses regularly registered and taken under the protection of government, the cause of morality would be promoted. Yes! astonished reader, the cause of morality promoted. When evils cannot be avoided they should be faced, examined, and the best judgment used to lighten their effects as much as possible. This is the advice any sensible family man would give his friend in private life, and the same is applicable to governments, whose peculiar business it is to watch all the evils incidental to, and attendant on the community : it is their duty to lighten the pernicious influences of vice in every grade. But our mock-modest rulers, by affecting not to know the extent of the mischief, have almost persuaded themselves of the nullibility of these houses, although their daily increase in every quarter of the town is notorious to every body else; and the evil has increased to such a frightful extent, that the very children of the present age are drawn into the vice of prostitution, their principles being sapped, and a large proportion of society brought into a state of total depravity. I was in court at Clerkenwell last May sessions, when a girl, little more than twelve years of age, was placed at the bar for stealing some bottles. She had parents, but they heeded her not : she wept most bitterly. It seems she had been compelled to sleep in the streets for want of a home. Although so young, the court were informed that she was at that moment in a state of disease, which had only been discovered that morning. She was sentenced to two months im-



prisonment. Ought not the law to seek out for the parents, and punish them, rather than this unfortunate girl?

“Vice is a monster of so frightful mien,  
That to be hated needs but to be seen ;  
Yet seen too oft, familiar with her face,  
We first endure—then pity—then embrace.”

I was informed, only a few days since, by an active and intelligent officer of the police, that in my neighbourhood, (the Regent's Park,) one street contains thirty-six of these houses, in one of which he had ascertained, the night previously, forty-five girls had slept, there being several beds in the house in which six of these unfortunate young creatures were sleeping together. When these things are offered to be proved and established, so as to remove the doubts of the most sceptical and incredulous, no one can wonder at the progression of demoralization. In these times of danger from a pestilential disease, it is surprising that sanitary considerations have not induced the authorities to turn their attention to these houses, and at least, if not entirely dissociate them, see that they congregate only in such numbers as are in consonance with our general notions of civilized decency. The higher classes of society are very sensitive on the question of contamination, and fully appreciate the effects of association. They guard every avenue through which pollution can enter into their families, but the offspring of the poor are, for want of means, left to casual management. The *conversations*, the *soirée*, together with the aid of teachers, make the daughters of our proud Norman aristocracy what they are. They inherit their mother's beauty, but are modest, virtuous, and accomplished, by the force of example and good instruction. Look on the other side of the picture! behold sixty thousand poor deluded young females living in a state of depravity, surrounded by every vicious example, and fast hurrying on towards the extremity of misery; no friendly

\* This was written at the time the cholera morbus was raging in this country.

hand is held out to save them, no timely voice is heard to warn them of their danger ; and whilst in the full career of their headlong course, the operation of their example is permitted uninterruptedly to go on, keeping up and increasing their numbers daily. The homogeneity of the virtuous and the vicious classes is distinct, and it is the duty of the former to reflect on the causes which have occasioned the difference between them ; they will find no reason to be proud, or to entertain any great self-complaisance. Accident of birth only has drawn the line of demarcation that separates their condition in society. The fine lady possesses no accomplishments, no virtues, which she can inherently call her own ; they were written on her mind when it was a blank sheet, and she, partially, in an unconscious state. On the other hand, those who occupy the opposite position in the comparison cannot be accounted wholly answerable for all the evils attendant on their course of life, or for the effects produced on the rising generation of females in their own grade of society. Much is said in this country of the munificence of the rich, of charitable institutions, and of the number of our philanthropists ; but if we judge of things by their effects, we shall, on inquiry, find the good resulting to society from these sources has been very partial. Our amateur legislators and sentimentalists trust all to a *Vice Society*, a *Philanthropic Society*, and a few other cleemosynary establishments. To the first of these I should say, it is better to prevent vice than punish it, because by the time you catch one delinquent fifty others have been corrupted. And as to philanthropy, the word means universal love of mankind, and has nothing to do with the bit-by-bit mode of doing good to a few individuals under a system of jobbery, bartering one interest for another, for sinister views connected with a few institutions which have been established by gulling the asinine members of society. It is the fountain of vice whence the evil flows which requires absterging,—the large corrupted abscess of society which

must be healed ;—those sinks of vice where women and girls are found herding together by hundreds, and in a state that reminds us of the animals described by Dean Swift, called the Yahoos. We want a municipal government adapted to the new circumstances of society,—one which would act on an enlarged principle. I propose that a place of reception, similar to the one I have before named for the young sneaks, should be provided for the reception of the unprotected and erring girls : and here, I know, I shall be met with the same arguments of opposition as those named under the head of sneaks, viz. that there are too many, and that government may as well think of providing for all the propertyless people in the country.

The answer to this is plain. If you delay, and do not grapple with the evil at once, you will very soon have the increase so enormous, that society will be driven to demand it from you ; after you have, by neglect, trebled the difficulty of providing for them. But let us inquire whether there really be any such obstacles in the way. I have, under this head of ramps, recommended that a surveillance, and a more general system of espionage, should be adopted over meretricious women and girls in the metropolis ; but I am now confining myself to the furtive girls and the young sneak, as regards the expense of taking them out of society, both of which, in my judgment, demand the immediate and serious attention of the government. Let these two classes be legislated for, and you may hereafter spare yourselves the trouble of passing so many penal statutes to repress crime. The asylums I propose, both for the boys and girls, would be institutions for the reception only of those who had committed crime ; and it can hardly be supposed that any not before criminal would, for mere food, place themselves in the situation, and undergo the punishment, of one of the most abandoned classes in the community. If this fear be removed, (and I am convinced it is a chimerical one, as far as to its

being practised to any extent so as to interfere with the principle,) I then ask what you profess to be doing now regarding these boys and girls? Your answer would be, adopting all the means in our power to apprehend all who commit crime. So you do; but your system only catches one out of every six, leaving always a surplus on society of five-sixths—and this proportion is daily increasing, so that the evil is gaining on you. Now, my plan would very soon remove all the young plants which now encumber the ground, leaving the older ones either to fructify and die off, or to be rooted up as they are met with; by which, if the species were not entirely exterminated, the specimens would become rare. Reverting again to the objection of cost for their food, clothing, &c., it is natural to ask, who would be called on to pay it? The public. Who supports them now? The same answer must be given—the public. Part of their life is spent in the work-house, part in prison, and the remainder in plundering the public—so that, wherever they are, it is now at the public cost they live. If, however, you will take the entire management of them into your own hands, you will make one pound go as far as fifty now goes in supporting them, besides making them useful members (if not of this) of colonial society, to where, after a time, they may be sent, and made indented servants of, to pay the expense of sending them out. They are in their present state an incubus on morality, and a drag-chain to the industrious. Talk of the expense of providing for a few thousand boys and girls—who, by the way, would all very soon be earning nearly their own living under a proper system of management—look what they cost you now! There are nearly three thousand policemen employed in London, exclusive of the city establishment, an expensive magistracy, and heavy charges for the support of our courts—besides the costs to the county, over and over again, for prosecuting the same offender, with the charges for their keep in a state of idleness, or in doing that which is pro-

fitless during intervals of imprisonment. Add to all these charges the amount of what they abstract from the public, either by plunder or stratagem—set all this, and much more which might be named, in the balance sheet, against the probable charges for maintaining them in a state of order and industry, and it will be apparent at once that the better course will be to adopt the plan here proposed. It was only the other day I was for a few minutes at St. Mary-la-bonne police-office, when three boys were placed at the bar, charged with picking a gentleman's pocket of a handkerchief, which was produced; but, as the gentleman did not appear, they were discharged by Mr. Hoskins, who, after inquiring whether they were known as thieves, and being answered in the affirmative, discharged them, saying, "Mind your future course of life." Knowing the boys to be thieves, I followed and entered into conversation with them. I learnt that they were without a farthing in their pockets, and that they all three were very hungry, and had not a friend in the world to whom they could apply for assistance. Now, considering the circumstances in which they were placed, to turn them loose on the streets, was to say, Go rob the first person you meet! It is of no use to urge that they have no right to steal. There they were, ingrained thieves, having no other possible means of allaying the gnawings of hunger; and yet our system sets them at large. What shall be said in the defence of one who saw another load a pistol, avowing his intention of discharging the contents of it at the head of some other person, if the party so apprised of a fellow-mortal's danger did not take every step to prevent the commission of murder? Precisely so it is with these boys, differing only in the degrees of offence. I do not blame the magistrate: had he sent them to the House of Correction for three months, it would only have delayed the commission of the crime, and he had no power to dispose of them in any other way. Hundreds of thieves are weekly discharged under the same cir-

cumstances, the *exposé* of which calls loudly for legislative interference; and in the absence of which, it is much to be regretted that, in this society-country, there is not one formed for the purpose of employing agents to attend where these characters are discharged, offering them an asylum and temporary relief, during which some efforts might be made to withdraw them from their courses. If, however, it were made a national question, many of the present charitable institutions' "occupations would be gone," and they could not do better than to throw their funds up for the use of the all-absorbing one here proposed. Were it not that the operations of all the societies for reclaiming abandoned boys were so partial and circumscribed, I should have much to write on this subject. I have visited them all, and can say but little in their favour, excepting only the Society for the Refuge of the Destitute, to which the government were wont to subscribe one hundred pounds per annum. There was, however, some demur lately on the part of the committee of this society to receive any more boys on the recommendation of the judges. Whether the subscription had been altogether withheld, or whether they thought the sum paid into their funds inadequate to the numbers of boys sent for admission, did not appear. Some of the other societies have been founded by interested persons, having only their own gain in view. They publish flaming quarterly reports, which delude the subscribers, and deceive the public as to the advantages derived from them. Is this country never to be relieved from a system of jobbery? Not even in works of beneficence can she be spared. There are tales to be unfolded on this subject, wherein the honorary secretary himself is blind, and not sensible of the cat's-paw which has been made of him. In the interim I call on the public to disabuse their minds, if they have ever entertained a notion that these societies have answered any good purpose, as regards the reclaiming of juvenile offenders.

\*There is a society of this nature, recently established by the exertions of one individual, a few miles from town. As I knew all the circumstances of its formation, a few months since I went down to view the establishment. I found an immense large house and grounds, calculated to contain two hundred boys: there were, at the time I was at the place, eleven boys and as many attendants; and a committee-room, in which was a large table covered with papers, exhibiting as much appearance of important business as the table of the first Lord of the Admiralty in the most bellicose times. After examining the boys, I said to the superintendent, who was the real founder of the charitable institution, for sinister purposes, "You have no boys accustomed to crime here?" He replied, "No, sir; we are very particular, and don't like bad company!" I rejoined, "Well! but what is the object of your society? Is it not for the express purpose of reclaiming boys involved in crime? And, in my opinion, the worse they are, the credit due to you would be so much the more if you succeed in diverting them from the commission of sin; and the benefit to society will be in the same proportion." His reply to this remark was, "Well, we will have no bad ones here!" As I knew a *really* worthy alderman who had been made a tool in the forming of this establishment, I determined to ascertain his notions of the institution. A few days after I had formed this resolution, I met a boy I had long wished to reclaim, thinking that if an opportunity was afforded him he might be saved to society. I in consequence waited on the alderman, where it so happened I met the before-named superintendent. As I had been known to both of them for a long time as being tolerably well skilled in the study and management of these boys, I made no doubt of obtaining the boy's admission, to promote which I urged the youth's destitute condition, and the necessity he was under of resorting to crime for a subsistence, adding, that he had just before been discharged from Newgate. "O!" said the

alderman, "a bad one; I was present at his trial." The superintendent declared they did not want boys of that kind, and my request for his admission was refused. The prospectuses, advertisements, and the published letters of the honorary secretary, solicit the contributions of the public for the special purpose of reclaiming *abandoned criminal* boys. I here inform the subscribers that the conductors of the establishment seek after no such characters, but pick up the few they have with great care and circumspection from among the poorer classes, taking special pains to select those of a meek disposition, unmarked by any violent or strong propensities—such boys, in fact, as never were possessed of any devils to cast out. The number of boys now in the establishment is twenty-five, who are supplied with lodging and board, relieving their friends from the burden of providing for them. This is the extent of the charity—no more. They select this description of boys, to show how altered is their demeanour since they have come into the establishment; the visitors all the time contemplating them as heretofore old and desperate offenders. This is a fact; and I make the *exposé* to show the government the utter futility of relying on these partial and interested correctives of juvenile crime.

When this first appeared in print, in "Fraser's Magazine," the parties were very angry at the publicity given to these observations; I have, however, in the controversy which subsequently arose out of them, learnt that much more might with truth have been added on the score of jobbery, the party having got the lease of the premises where the institution is carried on, into his own hands, dictates to the society, and makes his own terms, *which of course are all characterised for benevolence*. One of the principals in the committee told me that they were hampered in consequence of this circumstance, and could not do as they wished: thus it is seen that the funds of this redoubted benevolent society are, in a measure, rendered subservient to the man who was so active in its first establishment. Further commentary would be a waste of



paper. This society, with five others, have sprung from a society which was established in the year 1815, and held at the King's Head, in the Poultry, called a Society for Employing the Poor and reducing the Poor's Rates. Very large sums were subscribed, but, like all its predecessors and successors, it entirely failed. Their bickerings and continual dissensions occasioned all the money to be spent in keeping the society together. At length a contractor, a lawyer, a surgeon, and a broker, united to form another, on a system somewhat differing from the former. The contractor advanced some money at a good profit, putting forth another man's published scheme of rural employment to found their own upon. This society is one and the same with the original, formed of dissentients from it. Another then started, headed by a lawyer, whose plan was to obtain waste land from government at a pepper-corn rent. Some was purchased, which now brings them in fifteen per cent. profit per annum. A second in the same neighbourhood (the Mansion House) was soon formed, on a system differing from the former; they employed agents to travel the country to collect information and solicit subscriptions, and it is said the adventure has brought the speculators some profit, though none to the poor man. A third was instituted, called the Allotment Society, under the management of a respectable body of Quakers; this is the most likely of all of them to succeed, because they are disinterested and sincere in what they profess, and consider well what they undertake. A fourth was then established to suppress Juvenile Vagrancy; this is the society to which I first alluded; it has been a total failure. The object is noble, but the basis on which it was founded weak, not to use a much harsher term. Some of its more worthy members having seen the truth of my former published remarks, have seceded from it, and it is now flickering like the remains of a candle, all but burnt out. I am particularly happy in having saved a certain benevolent Quaker lady the mortification of seeing her thousand pounds mis-

spent. The fifth society was formed at Hackney Wick, for the employment of acquitted felons; this rose, phoenix-like, from the ashes of the former, but the managing man of their first society was too subdulous for them; he would not give up the boys, saying he had a contract to keep them for six months, and the point was ceded to the cautious Scotchman. They then had recourse to the parish workhouses to supply them with boys: some were obtained from St. Giles's-in-the-fields; they, however, ran away, and strange outrages and confusion ensued. In truth, there is nothing rational or substantial in any of their plans; the subscriptions have been liberal, but party spirit in some, and sinisterous views with others, have rendered all abortive. A sixth society has been formed by some of the dissentient members of the former ones, to promote emigration, although all their former measures were adopted with a view to encourage home population, and they are now employed in shipping parties of boys off to the Cape of Good Hope, and Algola Bay, consisting of twenty-five in each party. It would appear that this course has been pursued purely through opposition to those who have thwarted their views, as all their previous speeches and writings were diametrically opposed to emigration.\* When we look at the state of society at the present time in this country, and contemplate the nature of these societies, who, through advertisements and paragraphs in the daily papers, make as much fuss about their twenty and thirty boys, as the whole country does on the West India question of Slavery, it cannot but excite a smile at those who flatter themselves that they have done any good to mankind by their exertions. I am convinced that many of them, members of these societies, mean well; and I also am convinced that many who insinuate themselves, and by perseverance become active agents, mean nothing but well to themselves, that is to say, they think only of filling their own pockets. It always was

\* Whilst this work was in the press, the same parties have established a seventh society for the purpose of promoting home colonization.

so, and always will be so, until remedial measures be adopted on a grand national scale. Almost all societies may be looked on as joint stock companies, holding that their own interests are paramount to that of the public.

It is but just, however, to state how different is the conduct of the Society of the Refuge for the Destitute. I took a boy of the same description as the one above named, at a time the institution was very full, and on the same morning fifty others were in attendance to solicit the committee to grant admissions for their children. On my stating that the boy was criminal, but in my judgment reformable, the chairman at once said—"These are the objects for our attention; leave the boy, sir, with us now." This was nine months since, and he is at this moment as fit for society as any of its heretofore more regular members are. I have this from the superintendent; a most able man for the situation in which he is engaged. He is the only person I have ever met with having the management of these kind of boys who pursues the non-castigation system, in support of which my best advocacy has ever been employed. And here I will make an observation, which has escaped me before when speaking of these boys. Full one moiety of them are characterised as being remarkable either for their good nature and easiness of disposition, or for weakness of intellectual powers. Now, all who have these peculiarities are decidedly reclaimable; and this opinion, I hope I may be allowed to say, without being charged with egotism, is founded on extensive observation, and on very reflective and matured consideration. The other half are of the most desperate and determined natures. In every small band, or knot of young thieves, there will always be found one or two *sillikins*, as they denominate those whom they can persuade to be foremost in any undertaking, by taunts of cowardice and threats of dissolving partnership. Now, the main cause of these boys being engaged at all in crime is, first, their acquaintance with their more cunning companions, arising out of the circumstance of proximity of residence in

the low neighbourhoods where they reside; secondly, their irresolute natures, and the want of mental strength rendering them so peculiarly suable, that they possess no power of resistance: for want of education and mental exercise, they suffer themselves to be placed in any boat, and carried down any stream, in companionship with those who chanced first to engage their attention. It is from a knowledge of these facts that I am led to predicate that, were they taken out of society on the first commission of crime, instead of being allowed to go the same round and round for years, that full one half would, after time for reflection, and the improvement of their mental capacities, be so far restored to a sense of their former errors and weaknesses, as to be with safety allowed to return into the world long before the expiration of the term of the sentences which it would be policy to pass on all, until their idiosyncrasies and improved fixedness of purpose could be unequivocally ascertained. There are some again who are indomitable; but, under a proper system of management, the instances would fall far short, very far short, of the popular impression regarding the incorrigibility of juvenile offenders. I therefore conjure the government to make the experiment on a sufficiently large scale, not only to relieve the public from losses of property, but to redeem our national character as a moral people, and to give to the philanthropic world the comfortable assurance that the cause of human happiness was on the advance; in the absence of which no true philanthropist can be happy, and which (speaking in reference to the abandoned boys) can never be brought about by any society or number of societies.

There is one great service a society might perform for the country, because the offices it would have to render are of a nature the government could not consistently be seen in, without making a law for the purpose. It has often occurred to me that a society to take some cognisance of discharged prisoners is a desideratum in this country, or rather metropolis;

and I have drawn out a plan for its formation. Many offenders, when discharged from prison, whether acquitted or on expiration of a term of imprisonment, if the opportunity were afforded them, would make strong efforts to regain their lost position in society ; but being without money, and deserted in their utmost need by their former friends, without strength of mind sufficient to support them under the reflection that they are outcasts of honest society—more properly, the unconvicted society—in a moment of despair, disgust, and revenge against all persons, they are induced to become associates of professed thieves, and are thus hurried on into a vortex of crime before they have time for reflection. If, when the mind were in this state, retiring from itself under a sense of shame, and in a condition too weak to meet the expected reproaches from their own immediate friends, and the almost certain sarcastic coolness of former acquaintances, a temporary shelter were afforded, and a little time given for reflection, allowing a few days for application to friends, under the advice and assistance of some able person who would be appointed for the purpose, and who should be selected for possessing peculiar zeal, joined to a kind and soothing disposition ;—if, I say, these chances were afforded them, many would be provided with future honest employment, who are now too often, for want of such an asylum, and “ministering to a mind diseased,” entirely lost to society, in all save the injuries it receives from them. This is not a speculative notion ; I have witnessed many instances in which discharged criminals, so situated as regards the state of their minds, might have, with a little assistance, been brought back to a feeling of perfect abhorrence of dishonest conduct.

The more I have reflected on the benefits such a society would confer on the public, the more I am impressed that it would transcend all others in point of utility, aye, if all the good which the other societies have ever done be taken in the aggregate. The necessity for the institution of such a society

is increased by the services which they would take on themselves, being of such a nature that the government cannot make any provisions for; that is, not very consistently with their other duties, namely, the punishment of offenders: they cannot both punish and compensate.

These remarks are not applicable to the offenders who follow dishonest practices as a trade. I would deal with them in another way. When one man commits an assault on another, or defames his character by promulgating statements injurious to his good fame, (technically termed a libel,) and is by a jury found guilty, the judge either sentences the offender to fine or imprisonment, or to both, but seldom or never fails to add that the person so sentenced shall give bail for his good behaviour for a certain period of time; in other words, that he will not again be guilty of a premunire within the prescribed space named in the bond, on pain of penalty. Assaults and libels have never been considered of the same heinous nature with felonies; yet it has never been thought advisable to take cognizance of the after conduct of a felon, not even for an hour, although there is no comparison in the degree of moral turpitude, or in the danger and jeopardy the public are placed in from the practices of the one and the other. It is true, any sentence passed on a felon to be imprisoned until he found "good and sufficient bail," would be equivalent to perpetual incarceration; but why not protect society by binding him in his own recognizances to abstain in future from crime, under a penalty of being imprisoned again, or transported? This, it may be thought, comes to nothing more than is accomplished by a recent act of Sir Robert Peel's, which increases the punishment under second and third convictions; but if the judges were authorized, as a consecutive to the entering into recognizance after undergoing any punishment for the commission of offence, that the convict should be at the same time bound to appear, under pain of imprisonment or transportation, as above mentioned, before

an officer who would be appointed for the purpose, to answer all such questions as may be put to him or her, every month, appertaining to his or her place of residence, and means of living—and, if necessary, to make them account for all or any part of their time between the intervals of examination, rendering them liable to apprehension on failure, as sentenced by the court;—if a power of this nature were in the hands of our criminal judges, no other sentence would be required, in almost every case of occasional lapses from the path of honesty, than to place the prisoner under the controul of this power, and thus avoid the contamination of him, by associating him, during some times a long incarceration, with the abandoned felons, besides degrading him and breaking his spirits, which is not the way to recall any man back, from a momentary deviation, to the path of virtue. This measure, then, would set at large all those who alone are to be considered as worth the preserving from prison pollution; and, on the other hand, put the bit into the mouths of all practised offenders having once appeared at any criminal bar. It may be objected, that a man so situated would be cramped in his movements in life, and his exertions to obtain an honest livelihood so paralysed, that he would not have a fair chance with his fellow-men. This difficulty, I think, would be removed by the examination being a private one, and by the superintending officer having a discretionary power even to forego the regular attendance of the party, whenever he saw him in an employment which gave him (the officer) satisfaction, and when his interference would tend to dispossess his charge of an honest living. Besides, this kind of police guardianship would only be for a term,—one, two, or three years at most, at the discretion of the judge before whom the culprit was tried. This duty, with all others relating to the protection of public and private property, ought to be placed in the hands of a commission, who should sit daily, and direct all measures deemed useful in the public police department.

They should make regular returns to parliament of their proceedings, accompanied with hints for the making, amending, and repealing laws, as they (the commissioners) might see needful, so as to have the laws always meeting and harmonizing with the changes which the new circumstances of society are ever rendering necessary. "The question of difficulty is," says an able writer on this subject, "why the laws and the means of prevention have not kept pace with the progressive advancement of the country, so as to check and keep within bounds those nefarious practices?" This question is readily answered. Our legislature has no regular source of information of the changes going on in society, nor is there any one held responsible to lay before parliament, from time to time, such plans of prevention laws as are calculated to go in advance of crime. Even the correctives of roguery and vice of all kinds are protracted and delayed until the most direful effects are produced to society, calling out from every street, lane, and alley, for government interference. Their supineness is not to be wondered at, when it is considered that each individual member of the legislature is without any information on which he can place any reliance, however anxious he may be to do his duty. Again, what is the duty of the whole, is not considered the business of any particular member of that body. A commission would remedy this defect in our present system—a commission which should have the entire charge of the public morals, and on which the government would call annually for its reports and advice in making laws for the improvement of the community at large. The only author I have met with who has written on the subject of prostitutes, said, thirty years ago:—

"But whether the numbers of these truly unfortunate women are a few thousands less or more, is of no consequence in the present discussion, since it is beyond all doubt that the evil is of a magnitude that is excessive, and imperiously calls for a remedy—not certainly a remedy against the possibility



of female prostitution; for it has already been stated, that it is a misfortune that must be endured in large societies. All that can be attempted is, to divest it of the faculty of extending its noxious influence beyond certain bounds, and restrain those excesses and indecencies which have already been shown to be so extremely noxious to society, and unavoidably productive of depravity and crime.

“The author is well aware that he treads on tender ground, when in suggesting any measure, however salutary it may be in lessening the calendars of delinquency, it shall have the appearance of giving a public sanction to female prostitution. Under the influence of strong prejudices, long rooted in the human mind, it may be in vain to plead *plus apud me ratio valebit quàm vulgi opinio*. If, however, the political maxim be true, *Qui non vetat peccare, cum possit, jubet*, it certainly follows, that by suffering an evil to continue, when we have it in our power to lessen or prevent it, we do *violence to reason and to humanity*.”

That a prudent and discreet regulation of prostitutes in this great metropolis would operate powerfully, not only in gradually diminishing their numbers, but also in securing public morals against the insults to which they are exposed, both in the open streets and at places of public entertainment, cannot be denied. Nothing can be clearer, than that the unrestrained latitude which is allowed to this class of females in London is certainly an inlet to many crimes. *Vulgar préjudice only* opposes a legislative arrangement. Religion and morality would both be advanced; because, instead of (by the appearance of sanctioning, as some may imagine) prostitution being encouraged, I say it would be restrained, and a check immediately given to this vice. In adopting the proposed measure, the example of several of our continental neighbours may be quoted, where crime has not attained the height it has in this country. Holland, Italy, and France, may be referred to as instances; they have each

a shorter calendar of criminals. The moral estimation of the character of these countries in private life, as compared to our own, forms another consideration distinct from the lower classes, from whence the mass of delinquency springs, and is generated.

The remarks under this head have run out somewhat irregularly, but I hope to be pardoned when the importance of the subject is considered.

## SECTION XII.

### RECEIVERS OF STOLEN GOODS.

NOTWITHSTANDING all that has been said on the encouragement these men hold out to thieves in the commission of crime, they, nevertheless, form a very subordinate consideration, in my opinion, of our criminal code. It must be admitted by all, that those who purchase goods, having a guilty knowledge of their being obtained dishonestly, deserve as heavy a punishment as the thief. But, as I before said in the former part of this work, there is no hope of putting down crime by any enactments against the receivers of stolen goods; because the difficulty of reaching one out of five hundred renders all laws inoperative, and almost a nullity against them; besides, if by possibility they could be constructed on any improved principle, and a greater proportion of offenders brought to justice than heretofore, yet the inducements to commit the offence, in consequence of the profits accruing therefrom, are such as will always bring a number into the trade equal to the wants of the robbers. It is for this reason

that I am led to believe all enactments against this offence will ever be found futile and useless in the repression of crime ; and this I am the more urged to press on the notice of our law-makers, that the energies of the magistracy should be mainly directed against the practical depredator. However, it is an offence, and one of equal turpitude with any in the calendar. The great and monied receivers are very rarely or never brought to justice ; Ikey Solomon is perhaps the only exception for many years past, and he successfully carried on the trade for upwards of thirty years.

I feel under an obligation to speak the truth in all I have to write of my experience ; and I have no hesitation in declaring, in the most solemn manner, that full one half of the persons convicted of this crime have been either entirely innocent, or been committed under circumstances of carelessness, merely from want of due caution, and not persons who were in the habit of purchasing from thieves, knowing the goods to have been stolen. Such is the strong prejudice of the judges against all those who are accused of this offence, that every buyer of a saddle, bridle, or old tub, whether the same had been purchased publicly or privately, whether the purchaser was in a state of sobriety or inebriation, is sure to have every quirk and turn of the law of evidence wrested against him ; and the judge never fails to labour, with all the zeal of a well-feed advocate, to procure a verdict of guilty—really almost insisting on the jury pronouncing him thus, considering it a *coup d'état* to convict every one charged with this offence, whilst the real receivers and abettors of crime go unpunished. This is an incontrovertible fact, and demands attention.

This statement is not made, as some are too apt to suppose all complaints are, merely for the sake of saying something against those who administer justice in our criminal courts of law, but to show that they deceive themselves by looking at the number of convictions under this head of crime, and in-

ferring therefrom that they are reducing the mass of real receivers.

Last year there was quite a sensation created in the woollen trade about three master-tailors, who were committed to Newgate for having purchased goods of a young man in the employ of a draper of considerable business in the vicinity of Coventry Street. It was immediately bruited all over the town, that his employer had lost two thousand pounds worth of property, and that these tailors had purchased the whole. The fact proved to be, that the culprit had robbed his master of about five hundred pounds worth of goods, which he had disposed of among a numerous body of tailors, persons he had become acquainted with through the large trade his master carried on; and he had induced these tradesmen to become his customers, by stating to them that he was shortly going into business for himself; that he was then, by an agreement with his employer, allowed to trade for himself; and that he had money, which enabled him to purchase for ready cash and sell again cheap. As he was a steady young man, many were by his representations induced to encourage his efforts, thinking they were serving an industrious and worthy person. At length, when his nefarious conduct was discovered, he confessed the robbery, and stated where the goods had been sold. It happened that all the purchasers but three had cut the articles up in the regular way of trade. These three, however, although most respectable tradesmen, and having the goods exposed in the open shop, with other articles of the same kind, and entered regularly at fair trade-prices in their account-books, were committed to Newgate to take their trials. Being employed to write a defence for one of them, I had frequent conferences with their attorneys, who all agreed, that although there could be no question of their innocence, yet, from the general prejudices of the judges against all who appeared before them charged with this offence, that a verdict of guilty would be obtained. It, how-

ever, for once, turned out otherwise—they were all acquitted; but many similar cases have come under my knowledge wherein no verdict of guilty should have been pronounced. These tradesmen were fortunate in having a respectable and intelligent jury, who looked only at the facts of the case, disregarding the judge's arguments altogether.

A very large proportion of those who come under the denomination of receivers of stolen goods, and who are tried at the Old Bailey, are persons free from any intention of guilt. The case of a poor broker, for whom I interested myself, is a fair sample of a hundred known to me. Whilst the man was ill in bed, one morning, about ten o'clock, his wife purchased a common plated liqueur frame, at what might be considered a fair broker's trade price; it was proved, that the instant after she became possessed of it, she placed it in a conspicuous part of the shop-window for sale. A few days afterwards it was seen in this place by the person from whom it had been stolen. The broker, under Sir Robert Peel's act, was convicted, having the stolen property in his possession, for which he could not account, it being brought into his shop by a stranger.

Now if this man, or rather his wife, were to blame, and deserved fourteen years' transportation (which he got) for what may be considered an indiscretion, I can only say to the judge who thinks so, that, every hour of his existence, thousands of similar transactions are going on in this metropolis, without the parties having the slightest notion of buying stolen property. The man was totally ruined, his family dispersed, his wife in a workhouse, his own constitution entirely broken by an imprisonment of six years and a quarter, when he was again restored, a useless member, to society. Montesquieu says, "A receiver may act innocently on a thousand occasions; the thief is always culpable; one hinders the conviction of a crime, another commits it; in one the whole is passive, the other is active; the thief must surmount more

obstacles, and his soul must be more hardened against the laws."

It ought not to be disguised, that our present laws do not reach the real offenders ; they are so flimsily constructed as never to catch any but the ignorant and weak—the monied man breaks through them every hour. And this will ever be the case whilst our legislature works by the piece-meal system of making laws, which has from time to time been adopted, on suggestions applicable only to particular cases. It is to be lamented that we have not *one general law that should embrace every object*, and remedy every defect in the present statutes, on the subject of the criminal jurisprudence. Whether the characters who are charged with this crime, that now appear at the Old Bailey, are in each particular case guilty or otherwise, I will not further dispute ; but I will, in almost every instance, undertake to prove the individuals, one by one, are *not connected* with the regular and wholesale plunderer, by which some millions in a year are taken from the public.

The receivers are a numerous body, but may, for my purpose in this paper, be classed under the following heads :—

Buyers of stolen bank and country notes ;

Ditto of plate ;

Ditto of jewellery and watches ;

Marine store-shops ;

Women who reside in courts, or in obscure places, professing to carry on washing, mangling, or keeping some little shop as a blind, or *stall* ;

Women who keep stalls in the streets ;

Pawnbrokers, who open for the purpose of receiving stolen goods ;

Jews who call themselves general dealers ;

To which I may with fairness add, many very large and wealthy houses in the city of London, whose transactions of late years can come under no other denomination.

There are, probably, no more than ten persons in London who carry on the trade of purchasing bank-notes solely. These men are so connected, that they can dispose of any notes. Even after they are advertised, and payment stopped at the bank, and every publicity given to the numbers, yet will they unhesitatingly buy at a profit of twenty-five per cent., giving fifteen shillings for every pound, most of which are forwarded to the continent, where they are passed through a variety of hands, in trading transactions, until all possibility of tracing them is removed, and in time find their way to the Bank of England for payment. It is evident that this trade must ever be confined to a few, from the difficulty of forming connexions to carry it on with security. Not many years since a certain tradesman embarked in this speculation, but, for want of a proper concatenation of auxiliaries, he very narrowly escaped conviction on a very large note. Sometimes the parties will go over themselves, and lay the whole of their money out at the large trading fairs which are held on the continent; then, by selling again immediately, receive the currency of the country where they are. This, if done at one per cent. loss, is not a consideration, as they generally deal for considerable sums; the twenty-five per cent. covering all losses, and leaving them ample profit for their trouble.

*The plate-receivers* are persons who keep fixed crucibles always in readiness, to melt any quantity of plate brought in. When the whole is cast off, it is weighed, and purchased at about one shilling and three-pence per ounce under the current market-price of silver; or, sometimes a liberal payment is made for the melting, and the thief disposes of the goods at his own discretion. In this case, if the plate is not recovered *in transitu* to the crucible, there is no longer any risk in possessing the property, it having, in a few minutes, undergone a change of figure which prevents its owner from ever again recognizing his property.

*Those who purchase jewellery and watches* are principally

Jews, who either travel the country with it, or send it to their connexions at sea-port towns, where it is disposed of and dispersed better than at inland towns, where purchasers of these articles are mostly stationary.

*Marine store-keepers* have, from time immemorial, borne the odium of having been the chief receivers in the metropolis; and I believe they have deserved the reproach. The principal business is, however, gone out of their hands, save in naval and military robberies of stores, which have at all times been extensive in our dock-yards and other arsenals, and on the banks of the river. Through the assistance of these men, plunder is constantly obtained and disposed of in various ways, which will be hereafter explained under that head.

It is astonishing what a number of women there are in this town who live by buying stolen articles of the young sneaks. Every kind of portable commodity they are open to receive; linen-drapery, hosiery, work-boxes, tea-caddies, &c. &c.; in short, every thing the young thief can lay his hands on they take. I defended one of these women four times, and each time she escaped justice; being, however, in every case, allowed to put in bail for her appearance to take her trial—a circumstance which goes a great length in the Court of the Old Bailey. When a person charged with an offence renders himself on bail, the Old Bailey judges are disarmed of their prejudices, and the party when placed at the bar is already half acquitted.

Their practice is to have a house, or lodging, away from the receiving-shop, in which their husband, sister, or some other participator in the profits resides, and to which place every article is conveyed as speedily as possible after the thief is gone: very frequently it is by a back communication between the two premises. If an officer should follow too closely, before the articles are removed, they have always a ready answer—they wash for the boy, who is in some service unknown to them, and that he called a little time since for a



clean shirt, and asked permission to leave the bundle, or box, until he returned; adding, "Good God! I hope the boy has not turned thief!"

By conducting their business in this and similar ways, they generally escape justice. I at one time knew of seventy-four of these places in the metropolis, of which I took an account from convicted boys. The certainty of their existence and locality I obtained by asking the fresh boys who came into prison if they knew them, sometimes giving their names, and then desiring them to say where the houses were situated; at other times naming the residence, and asking for the name of the woman who kept it; as also by relating, hearing, and comparing anecdotes about their various doings, which I was constantly drawing out of the boys. Now this is an astounding fact, and at the time I could, with the assistance of one boy I could name, have convicted the whole in a few weeks. I have mentioned this to many who ought to take cognizance of these things, but without effect.

*Women who keep stands for the sale of fruit, &c. in the street.*—These persons are the incipient sneaks' only resource in vending the trifling articles they commence crime with; edible articles are mostly coveted by them, and for which they give not one-seventh part of the value. I believe there is not one of these women, who makes a permanent standing in one place, but relies more on her dealings with these young rogues for a living, than on any sale of goods at her stall.

*Pawnbrokers.*—There are pawnbrokers in every low neighbourhood throughout the metropolis whose whole business consists in receiving stolen goods in the way of pledges. I have received information of several, who are considered by the offenders to give much better prices than the regular fences, which makes them prefer pledging their booty, although there is never any intention of redeeming the goods. This the pawnbrokers know, as the thief, being every hour

liable to fall into the officers' hands, usually destroys the duplicates, to prevent any second charge being brought against him.

Pawnbrokers are a much more culpable race of dealers than the world generally supposes. Their tricks are very numerous, and were it not that I am tenacious of injuring a work which I know is coming out on the subject, I would devote more space to them. I will, however, give one as a sample. There are certain swindlers who assume the garb and manners of countrymen, who frequent markets and public-houses, pretending that they have come up to town with their families to seek for work, but being unfortunate, have been compelled to pawn their watch, worth seven pounds, for two pounds, &c. &c., and unless they can sell the ticket must starve until they can obtain work; by this tale they readily find some one to purchase it at perhaps a pound. Now the way one of these tickets is obtained is thus: the swindler goes to the pawnbroker's and looks at a watch, for which a price is named, but he says he has not then got the money, but will give two shillings in advance, if the pawnbroker will make him out a ticket for the remainder, adding, "By that plan I shall make sure that you won't sell it." The pawnbroker, knowing his customer, and what his object is, puts on a price accordingly, polishes up the case, and carefully envelopes it in chamois leather, then lays it by in expectation of his customer, who he is aware can only come through the sale of the ticket. Purchasers, conceiving that if the pawnbroker will give two pounds on the watch that it must at least be worth double the sum, are readily drawn into the snare. Although no pawnbroker would be indiscreet enough to actively collude by compact or bargain with these swindlers, yet they do so passively, as they well know what their object is when they come into the shop, and take special care to share the profits of their crime by the price they put on the articles,

and the encouragement they hold out to them by doing business in this way.

*Jews who call themselves general dealers.*—This is as numerous a class as any in London who receive stolen goods. They are a very cunning and wary set of dealers, who carry on their practices so artfully as rarely to be caught: their fraternization affords them a large scope of connexion in disposing of the goods after they are bought—an advantage very few others enjoy.

Although any practice of the regular tradesmen does not truly come under this head, yet so many nefarious transactions have come within my observation in the city of London, that I cannot pass the subject by without some notice. I will not, however, in this place make any observations on the law of debtor and creditor, or the means by which many persons possess themselves of goods surreptitiously, further than to give one instance which came within my own knowledge. A firm in the Manchester line, which had made some money, (I will not say how,) resided next door to a large carpet-warehouse, the proprietor of which offered the trade and premises to his neighbours for a certain sum. They in consequence entered into a negotiation for the sale and purchase of the same. The firm, which was situated not far from Bow Church, suggested, that as the carpet-dealer had a good trade and credit, (although on the eve of showing embarrassment to his creditors,) he should make a journey among the carpet-manufacturers, and purchase as largely as he could, and fill the warehouse with goods, which they (the firm) would take, after deducting twenty per cent. from the invoice prices, together with the other goods on the premises at the same rate; reminding the carpet-warehouseman, that, as his circumstances would constrain him to make a compromise with his creditors, the ready cash which would be paid by them would enable him to offer prompt payment of a small dividend—an offer

more likely to be acceded to by his creditors, than a larger composition in prospective. By this arrangement the firm realised upwards of 1700/., the carpet-man paid five shillings in the pound to his creditors, and thus both parties were gainers, at the expense of honest men. This statement, which is founded on facts, needs no comment.

This is only one sample of many others of daily occurrence in our virtuous metropolis. Abuses of every description, when about to be exposed, meet with opposition. The principals in this transaction, aware of my knowledge of their proceedings in this and many similar doings, have had the audacity to threaten any who may cause the *exposé*. As this is not a place to indulge in digression, all I shall say for the present is, that every thing on city business will be out in due time. I should have stated, that an eminent silversmith had some participation in this nefarious transaction, and that the Manchester warehousemen are at this moment prosperously carrying on their trade on the premises of the carpet-dealer, so *respectably* obtained. How is it that these receivers of stolen goods are not more exposed? Is it because they all become rich, and, by the modern gauge of respectability, are influential, and company for gentlemen?

“ Men are what they name not to themselves,  
And trust not to each other.”

### SECTION XIII.

#### FORGERS.

As the prosperity of a country advances, there is generally a proportionate increase of evil: whilst an influx of riches is

placed in one scale, an augmentation of crime is found in the other. In London, where the population and commerce have arrived to such an extraordinary height, and where the continual interchange of property and transfers of money are going on to an almost incredible amount, it ceases to be a wonder, that where all are struggling to arrive at or maintain a place in respectable society, that many should lose their position, and, being rendered desperate by disappointment, resort to forgery and other crimes. It may be presumed, that nearly the whole of forgeries on bankers and merchants are committed by persons whose minds are in a state of despair, arising sometimes out of real circumstances of misfortune, but more frequently by the pursuit of wild and ill-judged speculations. In this great *wen*, many in their schemes and transactions indulge in foolish and extravagant notions of gain ; and such men being, for the most part, of a temperament which will not allow them, under any disappointments, to reflect coolly on consequences, they rush recklessly into the commission of forgery ; being impelled by their idiosyncrasies to make one desperate effort to reimburse themselves for actual losses, or what, by miscalculation, they have been disappointed in realizing. Others, again, who give themselves carelessly up to an inordinate love of pleasure, plunging themselves into expenses far beyond their means, and who having once tasted of the baneful spring of extravagant habits, can never find resolution to forego them ; and for the support of which they have recourse to forgery. Not a few are drawn into this crime by the fatal propensity of gaming : after a night spent at the hazard or *rouge et noir* table, violently agitated the whole time with the various turns of good and ill luck, the mind at length becomes morbidly excited ; and in this state, after suffering some heavy loss, is prepared for the commission of forgery. In a large community such members are like ill weeds in a fair garden, which will spring up again and again, root them out as often as you may.

From these considerations, it is evident that no penal laws will ever be effective in suppressing this crime; and the government has manifested much humanity and sound judgment in relieving the public from the shocking spectacles so often repeated in this metropolis, by executing all who committed this offence. The punishment annexed to the crime never enters into the mind of the man who sits down, in a state of monomania, to write another's name, for the purpose of unlawfully obtaining money. The main object in view is to throw as many obstacles in the way of the practicability of committing the act of forgery, more than considering the severity of punishment. Many forgeries are committed on bankers and merchants by false checks, or drafts for money. It only requires an arrangement between the banker and his customer to entirely put a stop to this mode of perpetrating the offence. Two things are necessary to be done for the accomplishment of this desideratum:

1st. A private scheme of signs for the whole year should be constructed by each banker, and given to his customers on a card every first day of January; as there would be no more issued than there were customers, and as the drawers of the drafts could have no motive to communicate the sign to a third person, secrecy would be preserved throughout the year; or new schemes of cipher might be issued every month, if found necessary. On the card so given out by the banker should be expressed the letter or figure he had in his scheme fixed on for every day in the year. Every morning when the bankers commenced their payments, the cashiers would of course have the day's mark given out to them; with which all checks that day presented must agree, before they could be answered by payment. It would be a waste of time to expatiate on the endless variety of signs which might be contrived; the letter A might serve for the first year, only by assigning to it a different situation, either on the face or back of the check, for every day in the year.

2ndly. If the bankers would but be more careful in the delivery of blank checks, and their customers equally cautious when they were in their possession, and not suffer them to lie about on the desks in the counting-houses, as is the almost universal practice. It should be a fixed rule, that none but printed checks should be paid; so that the man who contemplated a forgery must be constrained to possess himself of a form before he could commit the deed; and this would be rendered very difficult for him to do, if the writers of checks would take as much care of the blanks as of their bank-notes, and which they are bound to do;—in fine, to make it as difficult to obtain an unfilled-up check as it would be to steal their cash-box from the iron chest.

If these plans were adopted, I conceive there would be few forgeries of checks on bankers. Regarding bills and notes of hand, there is less danger of forgeries. If, however, it were more a custom of trade with respect to town bills, that the accepting party should be applied to, for the purpose of ascertaining the genuineness of the document before advances were made on it, a great check would be given to this species of forgery. Many a man now forges a bill with the full intention of himself preventing the presentation by paying it before it becomes due. If such a custom of application were but partially established in London, it would increase the chances of detection so as to operate as a powerful restraint on the offence. Bank of England and country-note forgeries there is no possibility of lessening, until discovery be made of a more intricate and better mode of making them, and thereby increase the difficulties of imitation.

It is not, however, very easy to imagine any print or paper which cannot have their like formed. One thing on this subject strikes me as very extraordinary, namely, that at no time of late years has there been a single instance of the maker of bank-notes, or his plate, being brought to the bar of the Old Bailey. Why do not, it may be asked, the police employ

persons to purchase them, and thus reach the principals in this offence? If they know not how to set about it, there are numbers in prison who will instruct them, if applied to in a proper manner. This mode of attacking them appears to be the only one left open for their adoption; for as long as the notes are to be purchased, and their prices low, there will always be buyers in this great town.

## SECTION XIV.

## EMBEZZLEMENT.

THE term embezzlement formerly implied any kind of peculation or robbery committed by servants on the property of their employers. It is now defined in law (and in common acceptation of the word is so understood) to be, the unlawfully and feloniously, contrary to the statute, appropriating money entrusted to a servant's charge, for the use and business of his master, to his own purposes. An act of parliament, known by the name of Sir Thomas Plomer's act, makes this offence punishable with fourteen years' transportation, without regard to the amount of money embezzled. All other kinds of robbery by servants are treated in law as common felonies. When it is considered that immense sums of money are constantly passing from hand to hand in this metropolis, and that thousands of clerks, shopmen, apprentices, and even porters, are employed in conveying cash throughout the town, it is a matter of surprise, and a very consolatory reflection in the present degenerate state of morals and principles, that there should be so few cases of embezzle-



ment brought to the bar of the Old Bailey. However, more cases of this kind of crime are either forgiven or compounded, than of any other known offence against the laws. There are many reasons why it should be so. Perhaps the offender may have been an old and faithful servant up to the period of the commission of the crime; and the recollection of former services are put into the scale against one act of derilection from honesty. In other cases, the culprit's family are known and respected by the offended party, when considerations for the feelings of the innocent prevail. But more frequently the love of money triumphs over all other causes, the prosecutor agreeing to forego the proceedings if the lost property is restored.

The causes which lead to this offence involve the moral state of the metropolis; I shall therefore conclude my remarks under this head with relating one case, which is too remarkable to be omitted.

A youth about seventeen years of age was entrusted with 470*l.* by his master, for the purpose of paying it into the banker's; when he reached the house it was closed, being after five o'clock. As he returned home with the money in his pocket, it suddenly came into his thoughts that he would rob his master of it: he therefore went home, as if he had paid the money regularly into the banker's hands. At night when he went to his bed-room, having previously procured some paste and sheets of blue lining-paper, he fastened all the notes by pasting their edges against the interior of his clothes-box, and then covered them in the same manner with the blue lining-paper; in the morning replacing his clothes as usual.

In the course of the following day it was discovered that the money had not been paid into the banker's, when he said he had lost it, and was afraid to mention it to his master. He was given in custody, but still persisted in his having lost the notes. On the trial, there being a total absence of any proof of his having stolen the notes, or that he had appropriated

them to his own use, his story, which was artfully told, was believed by the jury, and he was acquitted. The mother of the youth now made an application for her son's clothes and box, which were refused, more out of annoyance than for any other purpose, as the officer had searched the box when the boy was taken into custody. A letter was written, threatening to bring an action for the recovery of the box and clothes, which induced the prosecutor to restore them to the lad, who on his shoulders carried the 470*l.* out of the house, after having been tried and acquitted for stealing the same. The boy, during his residence in Newgate, had learned enough of law to feel assured that he could not be tried again for the same offence; and his mother assisting him, the notes were all rendered available; and I have been informed that she opened a shop of business with the money.

## SECTION XV.

### DUFFERS AND RING-DROPPERS.

THESE offenders were at one time very numerous, and both crimes usually practised by the same persons, but their tricks are now too stale to catch many. Persons who reside in town are generally cautioned against these traps early in life; but when time has rendered the crime, from desuetude, forgotten, there are always some ready to revive it, and feel the pulse of the public or the subject: this has been the case with the duffers, who are persons dressed in the habiliments of seafaring men, assuming a blunt kind of honest, straightforward manner. Their object is to impose a common, home-made article, on the public for a valuable foreign one, under pre-

tence of their being smugglers. To enumerate all the tricks they resort to would be to write a much longer paper than the one now before the reader. In London, their most common practice is, for one of them to go into the street and accost any decent-looking country person, saying, "they have some most valuable articles of foreign make, which they have smuggled, and which they will, being in want of money, sell very cheap." As a countryman, when in town, is anxious to take his wife or daughter some kind of present, he too often falls into the trap, and accompanies the man to some remote public-house, where is sitting another fellow, with a bundle of goods, which is managed with such an air of caution and mystery about the great risk they run of seizure, and the enormous value of the articles, that the countryman generally has the goods crammed into his pocket without scarcely seeing them; when he pays the money for trash, and departs completely pigeoned. A few years since they had resort to another scheme, in which I was once myself a sufferer. As in the beforementioned case, a sailor-like, hearty-looking man, goes to a house, and mentions to the first person he sees, that he wants to speak to the master, whom he informs in a whisper, that he and his comrades have just come ashore, and have got seven or eight gallons of Cogniac or Schiedam in the neighbourhood, which will be sold very cheap, as they are in want of money. If permission be obtained to bring it, they put the cask into a sack, and when in the presence of the buyer, take out a gimblet, then, asking for a glass, bore a hole apparently at random; and, having served the party with a sample of really good quality, it is most usually sold, and, generally, in such a transaction, the money promptly paid. Shortly afterwards the secret comes out; the vessel is full of water, having a tube and a small vessel made inside the larger one, which contains about a pint of real spirits: the principal difficulty in this deception is, to bore exactly over the tube, which is, however, of course, marked before they bring it for

sale. The man who took me in had 25*l.* out of the same town all within a few hours, and got off.

Ring-dropping is, I believe, nearly an obsolete offence. A ring or seal, &c. is placed on the ground, and then, as another person is passing, a man pretends to have found it, saying, "I am lucky, sir! but as you were by at the same time it was found, I cannot but think, in common fairness, you are entitled to half." If the bait takes, a question arises how it can be divided; this leads to an adjournment to some public-house, where the matter may be discussed, and the true value ascertained. The party who picked it up now regrets that he has not money about him, or he would at once take the thing, and give the other his moiety in cash; however, as he wants nothing but what is fair, he will leave the value of it to the strangers in the room, and take his share in money from the other. These strangers are confederates, who exclaim, "What a valuable article!" and expatiate on their good fortune; a high price is put on it. The finder at length pretending to be very generous, consents to take what the other can raise to get rid of the business; thus taking all the money from the man's pocket for an article probably worth only a few shillings.

## SECTION XVI.

### STEALING FROM CARRIAGES, CARTS, &c.

IN consequence of the great improvement in the make of travelling carriages, there are now few opportunities for the dragsman to exercise his calling in cutting off trunks fastened behind those vehicles, so that the thieves who have a preference for this mode of plunder, are now constrained to prow

about the streets, following the numerous carts which are daily employed in the delivering of goods in this large city, and who may be termed "cart sneaks." They watch and dog the cart in all its sinuous movements through the streets, till they see an opportunity of seizing any package within their reach, or when the carter is delivering his goods, and is obliged to quit his post for a few minutes. Some very daring acts are committed in this way. It is not many months since a fellow got into a cart at mid-day standing at the door of the Green Man and Still, in Oxford Street, and took out a large basket of linen, called a coach, and drove off; but he was brought to justice. I have known several instances of their being so daring as to roll large barrels, with their contents, away from where they stood in the street. One man stole a piece of carpet from the tail of a cart, with which, after moving a few yards, he found he could not proceed in consequence of its weight; he dropped it against the wall, and positively had the impudence to fetch it away after having gone for a friend to help him; and with which they got clear off. Many acts of the thieves, for coolness of audacity and apparent careless confidence, appear incredible in narration; but the truth is, that like all hazardous callings, the longer the parties remain in them, and the more miraculous escapes they have, the more confident assurance they acquire, until, like the forlorn-hope men of the regiment, they receive their death-shot at last.

## SECTION XVII.

### DEPREDACTIONS ON THE RIVER THAMES.

BEFORE the docks were constructed, and when ships to the number of two thousand and upwards were lying in the river,

discharging and taking in their cargoes, the depredations on the property of the shipping interest is almost past belief—even the anchors and cables of ships were stolen, whilst the vessels were sent adrift. At other times the pirates would cut the lighters adrift, and then follow them to a convenient situation for plunder. The most daring and outrageous piracies were committed even in open day; and it is calculated that, during the eighteenth century, the plunder on the river Thames amounted to ten millions sterling: the loss of the West India trade alone is estimated at seven millions during that period, and that of the coal trade to upwards of 20,000*l.* per annum.

But all this time, it must be remembered, there was no marine police, and the shipping were exposed, during the long winter nights, in the open river, to the piracies of, it is calculated, upwards of four thousand depredators, whom the government never interfered with. After the establishment of the river-police, a resolution was drawn up at a meeting of the shipping interest, wherein it was stated that not less than 15,000*l.* per annum was saved to them by that force.

Nothing can be more striking than this fact of the tardiness of governments to adopt efficient measures for the suppression of crime and immorality. For one whole century do they suffer crime uninterruptedly to run on, without making the slightest effort to stop its course, although the means of prevention existed all the time. At the eleventh hour they interfere, and take credit to themselves for having at length done their duty by suppressing the banditti. But did it never occur to them, that the evil produced by their supineness is in active force at the present moment? By their want of energy and foresight they have raised up a class of marauders, as formidable as the buccaniers were; and which, I fear, will take them a much longer time to annihilate, as their fastnesses are not so tangible.

When the four or five thousand plunderers were, by the

new system of river-police and docking the vessels, deprived of the power of continuing their furtive trade, can it be supposed they all turned honest men? No! they spread themselves all over the town, and, to use their own language, only altered their *game*. And here they are, or their posterity, now, on other ground, to carry on over again the same kind of warfare. They have augmented the number of London thieves, perhaps by their influence, example, and increased numbers, full one-half what they were thirty-five years ago. It is very much to be regretted that our rulers cannot see these things, and that they are not alive to the fact, that there is no course left open to them but to begin with the children of thieves, and thus cut off the breed altogether, now that they have suffered the body of depredators to accumulate to their present numbers.

At the present day, there is not so much crime committed on the river, comparatively, as on shore. In this view of the subject, I take the wharfs, warehouses, and all stores on the banks of the river, as property on shore, and it is so considered by the law. There are but few acts of open theft committed now on the river; some loss of property, such as grain, flour, &c., occasionally takes place, by its being delivered to forged orders; and peculations to a considerable amount are always being carried on in the dock-yards and various stores of government.

The following Tables show the report of delinquency and prison discipline made to the Secret Committee on Secondary Punishments, June, 1832, in England and Wales; also for Ireland and Scotland.

AMOUNT of LABOUR actually performed by PRISONERS sentenced to work on the TREAD WHEEL in the under-mentioned GAOLS and HOUSES of CORRECTION.

	Number of Hours of Labour.		Portion of Time allotted for Rest during Hours of Labour.	Time allotted for Prayers.	Time that Prisoners are actually on the Tread Wheel, deducting intervals of Rest and Time allowed for Prayers.		Height of the Steps of the Tread Wheel.	Number of Steps ascended per Minute.	Number of Feet per Day which the Prisoners ascend.	
	Summer.	Winter.			Summer.	Winter.			Summer.	Winter.
Bedford Gaol .....	10	7	1-3rd	15 min.	H. M. 6 30	H. M. 4 30	Inches. 8	20	5,000	3,600
Ditto House of Correction .....	10	6	1-3rd	none	6 40	4 0	7	40	9,333	
Durham Gaol .....	9	6	1-4th	none	6 45	4 30	7	46	10,867	7,560
Exeter House of Correction .....	8	7	1-4th	30 min.	5 40	4 53	7½	48		8,612
Knutsford House of Correction ..	10	7	1-3rd	none	6 40	4 40	8¾	48	14,000	9,800
Reading Gaol .....	8	8	1-4th	15 min.	5 49	5 49	9	48	12,564	12,564
Worcester Gaol .....	10	8	1-3rd	....	6 40	5 20	8½	48	13,600	10,880

ESTIMATED EXPENSE of converting the Day Rooms in Worcester Gaol into Solitary Sleeping Cells .. £9. 12s. 6d. per cell.  
 Ditto for building new Solitary Sleeping Cells, as an addition to the Gaol..... £11. 5s. 0d. per cell.



*Statement showing the difference in the Weekly Cost of Diet, at various Prisons included in the Gaol Act, according to the Returns made at Michaelmas, 1831.*

	Before Conviction		After Conviction	
	s.	d.	s.	d.
Bedford .....County Gaol.....	2	3	3	0
Berks.....Reading County Gaol.....	3	2	3	7½
			2	7
Abingdon House of Correction	3	0	3	2
			2	5
Bucks .....Aylesbury County Gaol.....	....		5	0
Cambridge.....County Gaol.....	1	10	2	7
Cumberland .....Carlisle County Gaol.....	2	1	3	3
Devon .....Exeter County Gaol.....	2	10½	2	10½
			3	6
Essex .....Chelmsford County Gaol.....	2	11	—	
			3	9
Springfield House of Correction	3	6	3	6
Colchester ditto.....	3	6	2	0
Flint .....County Gaol.....	3	6	2	0
Hants .....Winchester County Gaol.....	2	1	3	1½
Hereford .....County Gaol.....	....		3	8
Hertford .....Ditto.....	1	9	3	2
Huntingdon .....Ditto.....	1	10	2	9½
Kent .....Canterbury County Gaol.....	1	8	2	3
Lancaster .....Kirkdale House of Correction.....	....		2	0
			2	0
Salford ditto.....	....		1	6
			1	11½
Preston ditto.....	....		3	6
Leicester .....County Gaol.....	2	6	2	9
			3	6
Lincoln .....Spilsby House of Correction..	3	6	3	6
			3	6
Louth ditto.....	3	6	2	6
Merioneth.....County Gaol.....	2	6	4	0½
Monmouth.....Ditto.....	4	0½	3	7½
			3	7½
Montgomery....Ditto.....	2	0	2	0
Norfolk .....Norwich County Gaol.....	2	4	3	3
			3	1
City Gaol.....	3	1	3	8
Northumberland.Morpeth County Gaol, and 3 } Houses of Correction.... }	2	4	2	4
Newcastle Town Gaol.....	1	10	1	10
Rutland.....County Gaol.....	3	6	3	6
Salop .....Shrewsbury County Gaol....	2	0½	2	0½
Suffolk .....Bury County Gaol.....	1	10½	3	3½
Surrey .....County Gaol.....	1	11	2	1
			1	11
Kingston House of Correction.	1	8	2	8½
Borough Compter.....	2	11	2	11
Sussex .....Horsham County Gaol.....	2	9	3	2
			1	3
Lewes House of Correction ..	1	3	2	6
Warwick .....Coventry City Gaol.....	1	6	2	6
Worcester .....County Gaol.....	2	6	2	6
York .....Ditto.....	2	10	3	0
			2	2
City Gaol.....	....			
Wakefield House of Correction	....			

If not at hard labour.

If re-convicted.

No employment.

For Poaching and Bastardy.

Males.

Females.

Males.

Females.

Males.

Females.

Labour voluntary.

No hard labour.

*Statement showing the want of uniformity in Religious Instruction\* at various Prisons included in the Gaol Act, according to the Returns made at Michaelmas, 1831.*

ANGLESEY . . .	County Gaol. Prayers once a week besides Sunday.
BRECON . . .	County Gaol. Service once on Sundays. No daily prayers.
CARNARVON . . .	County Gaol. Prayers once a week, besides Sunday.
CHESTER . . .	City Gaol. Prayers twice a week, besides Sunday.
DENBIGH . . .	County Gaol. No daily prayers.
DEVON . . .	Exeter City Gaol. Prayers once a week, besides Sunday.
ESSEX . . .	Colchester House of Correction. Divine Service twice a week. Newport ditto. No chaplain.
FLINT . . .	County Gaol. Prayers twice a week, besides Sunday.
GLAMORGAN . . .	County Gaol. Divine Service twice a week.
GLOUCESTER . . .	Horsley House of Correction. The chaplain attends on Sundays and Wednesdays. Northleach House of Correction; the same. Littledean ditto; the same. Lawford's Gate ditto; ditto, and on Fridays.
GLOUCESTER . . .	City Gaol. Prayers once a week, besides Sunday.
HANTS . . .	Portsmouth Gaol. No chaplain.
HUNTINGDON . . .	County Gaol. No daily prayers.
LANCASTER . . .	Liverpool Borough Gaol. Prayers twice a week.
LEICESTER . . .	County Gaol. Prayers twice a week, besides Sunday. Borough Gaol. Service on Sundays and Thursdays.
LINCOLN . . .	Louth House of Correction. Prayers twice a week, besides Sunday. Folkingham ditto; the same. Spilshy ditto; the same. Spalding ditto; no daily prayers. Skirbeck ditto; no chaplain.
MERIONETH . . .	County Gaol. Service once a week; sermon once a month.
MONMOUTH . . .	Usk House of Correction. No daily prayers.
MONTGOMERY . . .	County Gaol. No daily prayers.
NORFOLK . . .	Norwich City Gaol. No daily prayers.
NORTHUMBERLAND . . .	Morpeth County Gaol. No daily prayers. Tynemouth House of Correction. No chaplain. Hexham ditto; ditto. Alnwick ditto; ditto. Newcastle-upon-Tyne Town Gaol. Prayers twice a week, besides Sunday.
NOTTINGHAM . . .	Town House of Correction. Prayers twice a week, besides Sunday.
RADNOR . . .	County Gaol. Service only on Sundays.
SOMERSET . . .	Bristol House of Correction. No daily prayers.
SUFFOLK . . .	Beccles House of Correction. Daily prayers read by the keeper. Woodbridge ditto. Chaplain attends three times a week.

\* The Gaol Act directs that the Morning and Evening Services of the Church of England shall be performed every Sunday by the chaplain: and prayers selected from the Liturgy shall be read at least every morning. Portions of the Scriptures shall be read to the prisoners, when assembled for instruction; at which times they are also to be catechised by the chaplain.

SURREY . . . .	Borough Compter. Prayers read by the keeper every morning.
SUSSEX . . . .	Battle House of Correction. No chaplain. The Dean of Battle attends every Sunday gratuitously.
WARWICK . . . .	County Gaol. Chaplain attends three times a week.
WESTMORELAND . . . .	County Gaol. No daily prayers.
WILTS . . . .	Marlborough Bridewell. Prayers three times in the week.
YORK . . . .	Beverley House of Correction. Morning prayers read by the keeper.
	Wakefield ditto. No daily prayers.

Schools have been established at only six of the prisons above-mentioned.

ENGLAND AND WALES.—NUMBER OF PERSONS charged with CRIMINAL OFFENCES, committed to the different GAOLS for TRIAL in each County.

In the Years ....	1825.	1826.	1827.	1828.	1829.	1830.	1831.
Anglesey .....	7	2	16	7	12	14	8
Bedford .....	123	83	108	109	134	134	103
Berks .....	154	140	208	190	212	*170	291
Brecon .....	21	14	16	21	17	20	14
Bucks .....	160	113	182	153	188	151	311
Cambridge .....	137	142	152	159	194	147	165
Cardigan .....	4	9	9	9	3	12	11
Carmarthen .....	28	15	17	40	23	42	*51
Carnarvon .....	15	14	22	18	15	19	36
Chester .....	306	415	497	466	542	534	513
Cornwall .....	109	110	150	126	122	193	145
Cumberland .....	57	54	79	53	47	74	74
Denbigh .....	26	24	26	34	35	28	32
Derby .....	84	134	160	171	175	191	202
Devon .....	437	440	432	425	430	494	399
Dorset .....	119	138	167	144	141	205	177
Durham .....	103	117	175	123	139	103	133
Essex .....	*408	*403	*451	*363	*587	*491	*607
Flint .....	11	12	22	22	20	31	27
Glamorgan .....	24	45	54	49	54	89	132
Gloucester.....	352	427	415	389	449	555	636
(Bristol) .....	133	158	139	177	171	174	188
Hants .....	357	285	341	354	396	*424	567
Hereford .....	68	97	150	127	135	145	166
Herts .....	*162	*122	*205	*199	*235	*274	*194
Huntingdon.....	31	34	31	19	44	36	85
Kent .....	*577	*632	*632	*604	*665	*649	*640
Lancaster.....	2,132	2,374	2,459	2,011	2,226	2,028	2,352
Leicester .....	148	237	260	247	249	196	181
Lincoln .....	198	221	329	302	337	258	307
Merioneth .....	1	2	6	7	5	12	3
Middlesex .....	2,902	3,457	3,381	3,516	3,567	3,390	3,514
Monmouth.....	55	60	95	55	109	126	129
Montgomery .....	36	20	22	17	32	40	30
Norfolk .....	409	441	486	421	536	429	549
Northampton .....	129	123	176	122	183	152	168
Northumberland .....	87	72	96	122	116	82	108
Nottingham.....	219	287	298	289	358	300	316
Oxford .....	110	167	210	141	167	193	270
Pembroke .....	26	20	42	18	21	24	19
Radnor .....	24	3	15	15	8	17	15
Rutland .....	7	17	14	16	20	15	11
Salop .....	126	130	178	168	165	225	228
Somerset .....	523	490	646	495	674	643	616
Stafford .....	276	448	569	575	613	563	644
Suffolk .....	292	293	351	283	357	362	371
Surrey .....	*591	*699	*663	*680	*716	*708	*733
Sussex .....	*273	*277	*309	*308	*378	*360	*314
Warwick .....	482	581	605	608	705	691	665
Westmoreland .....	16	9	20	19	11	22	17
Wilts .....	314	324	365	281	346	*418	568
Worcester .....	165	169	250	203	282	264	342
York .....	883	996	1,223	1,094	1,291	1,207	1,270
Total .....	14,437	16,164	17,924	16,564	18,675	18,107	19,647

\* The prisoners for trial at the Special Assizes for the several counties on the Home Circuit, and under Special Commission for other counties, commencing in December, in each year, are included in the numbers in the following year. The prisoners for trial at the like assizes, commencing in December, 1831, are therefore not included herein.

*Number of Persons Committed, Convicted, Sentenced, Acquitted, &c. &c.*

In the Years....	1825.	1826.	1827.	1828.	1829.	1830.	1831.	Total Number in Seven Years.
<b>COMMITTED for Trial:</b>								
Viz. Males.....	11,889	13,172	15,154	13,832	15,536	15,155	16,600	101,638
Females.....	2,548	2,692	2,770	2,732	3,119	2,972	3,017	19,880
Total.....	14,437	16,164	17,924	16,564	18,675	18,107	19,647	121,518
<b>CONVICTED &amp; SENTENCED.</b>								
To Death*.....	1,036*	1,203*	1,529*	1,165*	1,385*	1,397*	1,601*	9,316*
TRANSPORTATION for Life.	126	133	198	317	396	405	334	1,909
— 35 Years.....	..	..	..	..	1	..	..	1
— 28 Years.....	..	..	..	1	..	2	1	5
— 21 Years.....	..	..	1	..	2	..	1	4
— 14 Years.....	129	185	293	508	691	659	638	3,103
— 10 Years.....	..	..	..	1	..	..	1	2
— 9 Years.....	..	..	..	..	..	1	..	1
— 7 Years.....	1,419	1,945	2,232	2,046	2,285	2,169	2,340	14,436
Imprisonment, and severally to be whipped, fined, kept to hard labour, &c.	5 Years.....	..	..	1	..	..	..	1
	4 Years.....	..	..	..	1	..	..	1
	3 Years.....	7	11	11	11	7	1	53
	2 Years, and above 1 Year.	365	297	296	243	235	209	1,871
	1 Year, and above 6 Months....	1,193	1,201	1,433	1,117	1,277	1,311	8,755
	6 Months & under	5,408	5,819	6,251	5,991	6,646	6,458	43,585
WHIPPING,—and FINE...	281	340	321	322	336	284	360	2,214
Total Convicted....	9,964	11,107	12,567	11,723	13,261	12,805	13,830	85,257
Atquitted....	2,788	3,271	3,407	3,169	3,614	3,470	3,723	23,442
No Bill found, and not Prosecuted..	1,685	1,786	1,950	1,672	1,800	1,832	2,094	12,819
Total.....	14,437	16,164	17,924	16,564	18,675	18,107	19,647	121,518
* Of whom were Executed	50*	57*	73*	8*	74*	46*	52*	410*





